



APPENDIX

TO THE

LONDON MAGAZINE.

MDCCXXXVII.

Conclusion of the PROCEEDINGS and DEBATES of the *last Session of PARLIAMENT, continued from Page 684.*



IN our last we gave the Arguments made use of in favour of the Motion and Bill for repealing the old and laying a new Duty upon *Sweets*, and also a Part of the Arguments made use of against that Motion and Bill; therefore we shall now proceed to give an Account of the remaining Part of the Debate relating to that important Affair, beginning where we left off in our last. (See p. 684.)

In every Country, Sir, that which may be called the Estate or Revenue of the Publick is the Sum that may be raised yearly from the publick Lands, and from those Taxes and Impositions which the People will patiently submit to pay; therefore if in any one Year the publick Expence exceed that Sum, by mortgaging a Part of this publick Estate or Revenue, the Publick is in the same Circumstances with a private Man who runs out his Estate, and neither the one nor the other can, for the future, be reckoned to have a greater Estate or Revenue than what remains free to him after the Payment of the Interest upon his Mortgages yearly. The only Difference is, that the Revenue of a private Man is certain and always the same, whereas the publick Revenue of a Kingdom or State is variable, and may always be greater in Time of War than in Time of Peace; because, during a just and necessary War, the People will patiently submit to greater Taxes than

they will do in Time of Peace; but in either Case, if the Government of a Country should make the publick Expence exceed the publick Revenue, but for one Year only, it is a Step towards their Ruin, and a great Number of such Steps must certainly at last bring them to their Journey's End, which is the Ruin of their Country. For this Reason the Government of every Country ought to take special Care to proportion the publick Expence to the publick Revenue yearly, so as never to allow any publick Debt to be contracted, but what may be discharged by the Produce of the Taxes growing due within that Year.

Ministers, Sir, and those in the present Possession of Power, may very probably be for loading the Publick with Debts, instead of loading the People with Taxes, because the People are sensible only of the Taxes they pay, they are not immediately sensible of the Debt the Publick contracts, nor can they probably become sensible of it during that Minister's Administration. This may enable him to run the Nation into a needless Expence, or to squander the publick Money, without bringing an immediate Odium upon himself, or raising any Murmurs against his Administration; but every such Debt weakens the Power of the Crown, which depends upon the annual Revenue of the Kingdom, and may render it impossible even for the very next Successor to protect his Kingdom, either against Invasions and Insults from without, or Tumults and Insurrections from within; therefore no Man who has a true Regard for the

the Crown, or for the next Successor to the Crown, will, for the Ease of any temporary Minister, agree to run the Nation in Debt, in order that the People may not be sensible of the unnecessary Charge his Ambition, Imprudence, Avarice, or Extravagance, may have brought upon them.

When such Taxes are imposed and collected within the Year, as are fully sufficient for defraying the Expence of that Year, the People are sensible of the Expence, and will therefore enquire into the Necessity of that Expence, which will always be a Check upon the Measures of the Administration, in Time of War as well as Peace: It will not only make them frugal with respect to every Shilling of the publick Money they are obliged to lay out, but it will make them careful not to involve the Nation in any unnecessary War or Expence; and it will prevent their continuing of any War, longer than the future Security of the Nation requires. On the other Hand, when the publick Expence, or any Part of it, is raised by imposing a small Tax upon any of the Necessaries, Conveniencies, or Luxuries of Life, and mortgaging that Tax for a Number of Years, the People are not sensible of the Expence they are put to, and consequently make no Enquiry about it, which often gives an Encouragement to those in Power to run the People into needless Expences, and to lavish the publick Money. But if such Measures be continued for any Number of Years, these small Taxes grow so numerous, that they become not only sensible but insupportable: The Complaints and the Murmurs of the People then begin to grow general and loud; but the Misfortune is, that their Resentment falls upon those who have then the ill Fate to be in Power over them, and not upon those who were the original Authors of their Misery.

Another Misfortune is, Sir, that by contracting Debt, instead of imposing Taxes, the Nation is at last obliged to pay 3 or 4 s. sometimes more, for every Shilling that was ever applied to the publick Service; because the Interest and Charges of Management, which the People are obliged to pay yearly till the Principal be discharged, often amounts to double or treble the Sum first borrowed, which was the only Sum applied to the Service of the Publick. If we were to compute what this Nation has paid for Interest, and Charges of Management, upon all the Debts we have contracted, it would amount to an incredible Sum: I am convinced it would appear to be more than three Times the Amount of the whole Debt we owe at present. Let us but consider the Project now before us: Let us suppose 400,000*l.* borrowed at an Interest of 3 per Cent. and that the Tax will amount to but 35,000*l.* a Year, which is the least gross Produce we can suppose, upon the Supposition

that it will bring a net Sum of 30,000*l.* yearly into the *Exchequer*; in that Case, the People must pay 35,000*l.* a Year for 17 Years, which at 3 per Cent. Compound Interest amounts to near 750,000*l.* and which must be paid by the People of England in lieu of the 400,000*l.* now to be borrowed for the Service of this Year. When so low an Interest, in so short a Time, makes such a Difference, we may easily guess what an immense Sum the People of this Kingdom have paid for Interest and Charges of Management, since that Practice of creating—and mortgaging publick Funds, was first brought into Fashion amongst us.

It may, I know, be said, that if the whole Money necessary for the current Service is not raised within the Year, the People must save so much Money in their Pockets, which they would otherwise be obliged to pay out, for making good that Service; and that every private Man may make above 5 per Cent. of the Money so saved, instead of 3 per Cent. upon the Sum which the Publick borrows for the current Service; from whence it may be argued, that it is an Advantage for every private Man to run the Publick in Debt, rather than raise, within the Year, the whole Sum necessary for the current Service of the Year. But do not we know, Sir, that every Man looks upon the Taxes he is obliged to pay yearly, as a Part of his yearly Expence; and the more Taxes he is obliged to pay, the more he contracts his yearly Expence upon other Articles? This every prudent and provident Man will do, when he feels the Money going yearly out of his Pocket towards the publick Expence; but when a publick Debt is contracted, and thereby a Load thrown upon future Generations for the Ease of the present, no Man, let him be never so provident, sits down to compute the Ease he meets with, in order that he may save as much out of that Year's Expence, as may enable his Posterity to answer the Load thrown upon them. People consider only the yearly Taxes they are subjected to, and proportion their Expences upon other Articles accordingly; so that Posterity are so far from having the Principal left them, with Compound Interest at 5 per Cent. that they have neither Principal nor Interest left them; nor is it possible to persuade an Heir, that any Part of the Estate left him by his Ancestor, was saved for him, with a View of enabling him to pay his Share of that publick Debt, which was contracted in the Time of his Ancestor.

To these Misfortunes, Sir, let me add another, that the creating and mortgaging publick Funds, necessarily contributes to the raising and keeping up the natural Interest of Money, or to the draining the Nation of that Gold and Silver which is brought into it by its general Balance of Trade. As the

natural Interest of Money, in all Countries, depends upon the Proportion between the Demand for borrowing Money at Interest, and the Demand for lending Money at Interest, by creating and mortgaging publick Funds, you increase the first Demand, and consequently the natural Interest of Money must rise, unless you proportionably increase the other, and this you can no Way do but by prevailing with Foreigners to lend you a Sum equal to that publick Fund you have established. If you can do this, you keep up the same Proportion between the Demand for borrowing Money at Interest, and the Demand for lending Money at Interest, which you had in your Country before that publick Fund was created; but then what is the Consequence? The whole Sum payable yearly by Way of Interest upon that publick Fund, must be sent out of your Country yearly in *Gold or Silver*, or it must prevent so much *Gold and Silver* yearly coming in to you, by Means of your general Balance of Trade; for unless you create a new Fund, your foreign Creditors cannot possibly convert their Interest into Principal; and if you create a new Fund, you add to your former Misfortune, by increasing the annual Draught of *Gold and Silver* from amongst you.

To apply this, Sir, to our present Circumstances; suppose the whole of our publick Debts amounts to 48 Millions, and that but 10 Millions of that Capital belongs to Foreigners, tho' I am convinced their Share amounts to a much larger Sum: In that Case, you have taken 38 Millions from the Demand for lending Money at Interest in your Country, and have added it to the Demand for borrowing Money at Interest, which makes a Difference of no less than 76 Millions, and how this Difference must affect the Proportion between these two Demands, and consequently the natural Interest of Money, in this Country, I shall leave to every Gentleman that hears me to judge. Then as to the 10 Millions belonging to Foreigners, 'tis true, it prevents the Difference between these two Demands in this Country being so great as it would otherwise be; but the Consequence is, that the yearly Interest of this Sum of 10 Millions, which is 400,000 *l.* a Year, must be sent out annually in *Gold or Silver*, or in *Goods and Merchandise*; for all Bills of Exchange must at last be answered by one or other of these Funds. If it be sent out in *Gold and Silver*, it diminishes our National Stock of *Gold and Silver*; if in *Goods and Merchandise*, it prevents its Increase; because the Price of those *Goods and Merchandise* must necessarily at last have been returned to us in *Gold and Silver*, if we had had no such Interest to have paid yearly to Foreigners. While the general Balance of Trade continues in our Favour, the paying of this Interest to Foreigners will only pre-

vent the yearly Increase of our National Stock of *Gold and Silver*; but as soon as the general Balance of Trade turns against us, this whole Sum must be drawn out yearly in *Gold and Silver*, which must necessarily in a few Years, entirely exhaust our National Stock of those two Metals; and when that Misfortune comes upon us, I am afraid we shall find but little Comfort or Relief in our Paper Credit.

This Consideration alone, Sir, I should think, would make every Gentleman resolve to submit to any Tax, rather than run the Nation further into Debt; and I am sure it ought to make every Minister resolve to contract the publick Expence as much as possible. There are many other Misfortunes and Inconveniencies attending the creating and mortgaging of publick Funds; but I shall not trouble you with enumerating any more of them at present. I think, I have said enough for convincing every Man, who has a sound Heart as well as a sound Head, that any Project for running the Nation into a new Debt, must be a most pernicious Sort of Means for supplying the current Service of the Year. If so, I am sure every Gentleman that hears me, would give his Negative to the Question, if there should be an Occasion; but there will not, I believe, be any Occasion for a Negative; because, if the Hon. Gentleman who made you this Proposition, views it in the same Light I do, I am sure he will most readily give it up. It may, perhaps, be said, Will you leave the current Service unprovided for? Will you allow the Session to break up without providing for those Supplies you have already granted: No, Sir: Several other Methods may be thought of: I have hinted at one, which I am sure would be sufficient; I mean, that of abolishing several of our unnecessary Posts and Employments. A Committee for that Purpose, if we were unanimous, would soon find out a Fund for answering the present Deficiency; and, I am certain, there is no Method that will be more effectual for producing that Unanimity, than our rejecting or dropping the Proposition now before us; for which Reason, if it be insisted on, I shall most heartily give my Negative to the Question.

The Reply was to the Effect as follows, viz.

Sir, I am glad to find, that every Gentleman who has argued for, or against the Question now before us, seems to be of Opinion, the Supplies we have already voted, ought to be made good, some Way or other. When these Supplies were granted, I easily foresaw, that the *Malt-Tax* and a *Land-Tax* of 2 *s.* in the Pound, would not be sufficient for answering them; and I confess, tho' I saw the Necessity of the Supplies we had agreed to, I was under some Uneasiness to

think how it was possible to make good the Deficiency; because, I thought it would be hard to load the People with any new or additional Tax, or to make any Incroachment upon the Sinking Fund; but my Uneasiness was fully removed, as soon as my Hon. Friend had explained the Method, he had thought of, for making good that Deficiency. The Method he proposed, and which we have now under our Consideration, appeared to me so easy, and I beg his leave to say, so ingenious, that I imagined it would have been agreed to without any Opposition; but this is a Fate, which I am glad to find few, or no Propositions are like to meet with in this House; for a bad one ought, and I hope, always will be opposed, and a good one derives great Advantages from Opposition; because its Usefulness from thence appears in a much clearer Light. As I very much approve of the Method proposed by my Hon. Friend, for making good the Deficiency of the Supplies for this Year, I shall endeavour to remove the Objections that have been made to it, and then I shall endeavour to shew the Injustice, and Impossibility of the other Methods that have been proposed, or rather hinted at in this Debate.

I as heartily wish, Sir, as any Gentleman can do, that we could contract the publick Expence so as to make the *Malt Tax*, and a *Land-Tax* of 2*s.* in the Pound, sufficient for answering it yearly; but the publick Expence, as to its Quantity, neither depends upon our Resolution, nor upon the Will and Pleasure of those who have the Honour to be in the Administration of our Government. The annual publick Expence in this Country, as well as in every other Country, depends upon the Necessities of the Government only, and ought to be increased or diminished only according to those Necessities. In arbitrary Countries, the Ministers are the only Judges of those Necessities, and of the Sums that will be sufficient for answering, as well as of the Ways and Means most proper for raising them; but, in this happy Country, our Ministers are no Judges in either of these Respects: Their Business is only to lay before Parliament, what they think will be the Necessities of our Government for the ensuing Year; and, what Sums they think will be sufficient for answering those Necessities. When they have done so, they are, as it were, *functi officio*, they have nothing more to do; for, the Parliament is then to judge, whether those Necessities are real: Whether a less Sum may not be sufficient for answering those Necessities: And what Ways and Means are most proper for raising those Sums, that shall be thought necessary. Of these three Questions, we have already determined, the first two; and, now, we have the third under our Consideration.

In determining this third Question, we

certainly, ought, Sir, to chuse such Ways and Means as may be sufficient for the End proposed; such as may be least burdensome to the People, and such as may seem to occasion the fewest Murmurings against the Government: And, that the Method now proposed to us, has every one of these three Advantages, will best appear from answering the several Objections that have been made to it. I shall grant, Sir, that some Sort of Comparison may be made between the publick Revenue of a Nation, and a private Man's Estate; and that a Mortgage upon either, must be a Loss to Posterity, and a Diminution of the Estate, till that Mortgage be cleared; but, there is a very great Difference, between what may be called a Loss to Posterity, and what may be called doing them a real Injury: A private Man who mortgages his Estate, in order to support his Luxury or Extravagance, does a real Injury to his Posterity: But he, who by some cross Accident is obliged to mortgage his Estate, for the Preservation of himself and Family, does no Injury to his Posterity, tho' he subjects them to a Loss. In the same Manner, a Nation may often, for Self-Preservation, be obliged to be at a much greater publick Expence than can possibly be raised within the Year, and must then necessarily mortgage some Part of its publick Revenue; which is so far from being an Injury to Posterity, that there is nothing more just and reasonable; because, as future Generations are to reap a great Part of the Benefit, they ought to pay some Part of the Expences which were necessary for obtaining or preserving that Benefit.

Not only Necessity, therefore, Sir, but even common Justice may sometimes require, that a publick Debt should be contracted, rather than lay too heavy a Load upon the People for any one Year, or for any Number of Years; and, whatever Inconveniences or Disadvantages such a Measure may be attended with, the Necessity of Affairs will always be a full Justification of those, who pursue it. But, I cannot think, the Disadvantages attending such a Measure are near so grievous as have been represented; for as to the Interest and Charges of Management, the Money paid by the People for those Purposes, is seldom any real Loss to the Nation, because it is generally, all divided among our own People; there is but a very small Share of the Interest belongs to Foreigners; and what goes out that Way, is attended with this Advantage, that it procures the Nation some Friends in foreign States, who have often great Weight in their Councils, and, consequently, may prevent their joining in any Measures with our Enemies. Then, as to the Effect this Measure may have upon the Management of publick Money; I hope it will not be said that Ministers

are to be judged or punished by the People, in a mobbish and riotous Manner; their Conduct is always to be enquired into and judged of by the Representatives of the People in Parliament assembled; and, surely, no Gentleman of this House will ever be influenced, upon any such Occasion, by what the People feel, or say they feel; nor can we suppose, that any Gentleman of this House will ever approve of any Article of Expence proposed, only because his Posterity, and not he, are to suffer for it.

I should be glad, Sir, we could raise the Supplies of this Year within the Year: I should be glad our publick Necessities never required any greater Expence than what the publick Revenue would answer; but for the Reasons I have given I cannot admit it as a general and infallible Maxim, that we ought never to contract any publick Debt, or make any publick Mortgage; for when it becomes necessary to raise any large Sum for the Service of any one Year, I shall be for giving the People such a sufficient Time for paying it, as may not subject them to any great Difficulty. In private Life, it has always been looked on as an Advantage and an Ease to a Man, to give him several Terms for paying a large Sum of Money; and the Case is the same with respect to the People, it will be much more advantageous and easy for them to pay 400,000*l.* with the growing Interest in 17 Years, than to pay 400,000*l.* at one Payment, in any Manner you can contrive for raising it; so that if the Method now under our Consideration were really a Mortgage of some Part of our former Revenue, and consequently a Diminution of the publick Estate, I should be for agreeing to it; but it is really neither the one nor the other: It is an Improvement of the publick Revenue and Estate; and surely Posterity cannot find fault with us for mortgaging for a few Years only, the Produce of that Improvement. If a private Gentleman should by any Improvement add 100*l.* a Year to his Estate, and mortgage that Improvement for 17 Years only, surely his Son would have no Reason to blame his Conduct, even tho' he should die immediately after having made that Improvement and Mortgage, and all future Generations would have Reason to bless him.

From this single Consideration, Sir, all those Objections that are founded upon the Inconveniencies of mortgaging the publick Revenue, must vanish; and the Debt to be contracted is so small, and the Interest it is to be borrowed at, so low, that it can no way affect the natural Interest of Money, either upon publick or private Securities. Now, Sir, with respect to the Objection which impeaches the Proposition under our Consideration, with being either a Proposition for a new Tax, or a Proposition for making an Incroachment on the Sinking Fund, I was,

indeed, not a little surprised to hear it not only said, but insisted on, that the Duty proposed to be laid on any Sort of *Sweets* was a new Tax; considering how general the Words are of all the Acts of Parliament by which the present Duty was established or continued. The Words of that Law in K. William's Time, by which a Duty was first laid upon *Sweets*, are, *For every Gallon of mix'd Liquors, commonly called Sweets, made from Foreign or English Materials*: And by the Act of the 5th of the late Queen, by which the present Duty was first established, the Words are, *For every Barrel of Sweets made for Sale*. 'Tis true a Doubt has since arisen from the Description of *Sweets* contained in another Act of K. William's Reign; but as that of the 5th of Q. Anne is a subsequent Law, and as the Words of it are general, the Intention certainly was to subject all Liquors, commonly called *Sweets*, to the present Duty, if they were made for Sale; therefore we must suppose that this Doubt's not being cleared up by a Trial, as well as by the Opinion of Lawyers, does not proceed from any Neglect in the Officers of the Revenue, or from their finding the Opinion of Lawyers against them, but from every Man's being persuaded there was no Foundation for the Question, therefore no Man would stand the Event of a Law-suit upon it; and the small Produce of the Duty must be imputed to the same Cause; for as every Man knew he must pay 36*s.* a Barrel, if he made any *Sweets* for Sale, and that, considering the Height of that Duty he could expect no Advantage by the Sale, therefore very few Persons attempted to make any such Liquors for such a Purpose, ever since this Duty was imposed. Therefore the Duty now proposed to be laid on *Sweets* is so far from being a new Tax, that every Man in the Kingdom will look upon it as a Release from an insupportable Tax, and as a Restoring him to the full Use of his Garden and Orchard, which he has been deprived of ever since the present high Duty on *Sweets* took place.

I shall readily acknowledge, Sir, that the present Duty on *Sweets* stands appropriated to the South-Sea Company, and if the Produce of that Duty had ever been, or could ever be worth taking any Notice of, the Applying it to the current Service, would be an Incroachment on the Sinking Fund, because it would be necessary to make it good to the South-Sea Company out of the Sinking Fund; but the South-Sea Company can have no Right to any Thing but the Produce of the present Duty, and if you were to abolish the Duty entirely, all that the South-Sea Company could lay claim to, would be a future Annuity equal to that Produce, at a Medium ever since the Duty was first granted to them. Suppose no other or heavier Duty had ever been

714 PROCEEDINGS, &c. in the last Session of PARLIAMENT.

been laid on *Sweets* than 1s. per Barrel, which was the first Duty imposed on such Liquors; suppose that Duty had been granted to the *South-Sea* Company for securing to them the Payment of their Annuity, and suppose we were now to lay an additional Tax of 11s. per Barrel on such Liquors; would the *South-Sea* Company have any Right to that additional Tax? Or would the Applying of it to the current Service be any Incroachment upon the Sinking Fund? For the same Reason, if by any new Regulation you make a considerable Increase in the Produce of the Tax, the *South-Sea* Company can pretend no Right to that Increase, nor can the Application of it to the current Service be deemed an Incroachment upon the Sinking Fund. The utmost that can be pretended is, that a future Annuity ought to be paid out of that increased Produce to the *South-Sea* Company, or to the Sinking Fund, equal to the former Produce at a Medium, from the Time it was first appropriated to the Payment of our Debts. Such a future Annuity would, I say, be the only Thing that could with any Shadow of Reason be contended for, and in the present Case that Annuity would be so inconsiderable, that it is not to be regarded.

Thus it appears, Sir, that the Method proposed for making good the Deficiency in the Supplies for this ensuing Year can neither be called a Proposition for imposing a new Tax, nor can it be called a Proposition for making an Incroachment upon the Sinking Fund, or upon the Right of the *South-Sea* Company. But we have been told that the Duty proposed will either produce little or nothing, or it will subject a great Number of our People to Excise Laws. As to the future Produce of the Duty it is impossible to foretell with any Certainty what it will amount to; but the lowest Computation I ever heard of was 20,000*l.* a Year, and if the future Produce amount to that Sum, it will be sufficient for the End proposed, because it will not only pay the growing Interest yearly, but will likewise pay off a Part of the Principal yearly, so that the Whole may be at last discharged by the Means of this Duty only. Then as to Excise Laws, I have, 'tis true, heard a great many Exclamations against the Rigour of such Laws, and against the Inconveniencies and the Consequences of subjecting our People to such Laws; but the Misfortune is, that all these Suppositions are contradicted by Experience; for we have, for near this Century past, had such Laws in this Kingdom, without being sensible of the least Inconvenience arising from them; and I believe those who are subject to them live as happily and as independently as those who are not. These Laws are certain and publicly known, and therefore those who are subject to them can be under no Dependence

upon the Officers but upon the Laws themselves: If they conform to the Law they have not so much as a Favour to ask of any Commissioner or Officer of Excise; and if any Officer behave rudely in the Execution of them, or commits any Trespass, he may be prosecuted for it, as easily as any other Subject. This they are sensible of, and therefore they have hitherto generally done their Duty with as much Civility and good Nature as was possible; so that fair Traders who bring themselves under no Suspicion are seldom or ever subjected to any Inconvenience, nor are they ever visited or disturbed at unreasonable Hours.

But, Sir, supposing the Excise Laws to be as dangerous and as oppressive as they have been represented, our Farmers, our Wine-Merchants, and Vintners, will be in the same Case they are at present; for if any of them should begin to make *Sweets* for Sale, they would subject themselves to the Excise Laws, even as the Duty stands regulated by the Laws now in being; and tho' the Consumption of such Liquors should be very much increased by diminishing the Duty, as it probably will, it does not necessarily follow that every Farmer who has an Elder Hedge, or a Gooseberry Bush in his Garden should become a Maker of *Sweets*, no more than it is necessary for every Man who has an Acre of Barley to become a Brewer or a Maltster: If the Consumption should become very extensive and general, 'tis certain that proper Persons will set up the Trade of making such Liquors for Sale, and will purchase Fruits for that Purpose from the Farmer at a reasonable Price, in the same Way as Brewers, Distillers, and Maltsters now purchase their Barley. The only Difference I can see, is, that by this new Regulation, our Farmers will be put in a Way of making an Advantage of their Farms, which they have been debarred from ever since the high Duty upon *Sweets* took place; and the more Advantages they are enabled to make of their Farms, the better able will they be to pay their Rent to their Landlords; so that every Landed Gentleman has, in my Opinion, great Reason to approve of the Proposition now before us; for if it does not improve the Rent of his Estate, it will at least contribute towards rendering the Payment of that Rent more certain and punctual.

I hope, Sir, I have fully answered all the Objections made against the Proposition now before us, and as all the Gentlemen who have spoke upon the other Side of the Question, have acknowledged, that the Supplies we have agreed to ought to be made good by some Means or other, I wish they had directly and plainly proposed some other Method; for upon setting the two Methods in opposite Lights, it would have been very easy to

to have determined, which of them ought to be preferred. They have, indeed, given us some Sort of Hint of two other Methods, one of which, I mean that of an additional *Shilling in the Pound* upon Land, might have bore some Sort of Comparison, if the Land Tax for this ensuing Year had not been already settled, and the Bill actually brought in; so that it is now too late to think of any such Method; but if it were otherwise, if the Land Tax were still to be settled, I am sure it would be very easy to shew, that of all the Methods we can think of for raising Money, that of over-loading the Landed Interest is the most unjust, the most grievous, and the most dangerous. Even 2*s.* in the *Pound* upon Land is a great deal too much, when the whole publick Expence does not amount to much above 2 *Millions*; for as every Man ought in Justice to be made to contribute to the publick Expence, according to the Share of Riches he possesses, and as the Lands in *Great Britain* are not near equal in Value to the other Riches of the Nation, it is doing an Injustice to the Landed Interest, to make them contribute one Moiety of the publick Charge, which will be their Case for this next ensuing Year. But as the Land Tax is now entirely out of the Question, I shall not take up your Time with enlarging upon the Subject.

The other Method hinted at, is a Method extremely plausible in Appearance, but I question much, Sir, if it will ever be found practicable; and I am sure, it cannot be proposed as a Method for raising any Part of the Supplies we have already agreed to for this ensuing Year. In effect, it cannot properly be called a Method of providing for Supplies; it is rather a Method for diminishing the usual necessary Supplies, and cannot therefore come properly before us in this Committee. I do not at all question but there are many *fine-cure* Posts in this Kingdom, as well as in every other, and many useless or extravagant Salaries. Some of them might perhaps be abolished; but I doubt much if it will ever be in our Power to abolish them all, and therefore I'm afraid the Saving in that Way, upon the severest Scrutiny, would not amount to near the Sum the Hon. Gentleman supposes. However, let it amount to what it will, it cannot be made a Provision for the Supplies of this next ensuing Year; because if we were immediately to appoint a Committee for enquiring into that Affair, we cannot suppose that Committee would be able to go through the Business in this Session, nay, I doubt much if they would be able to make even a partial Report; and as many of those Posts, I believe most of the useless ones, are held for Life, and are a Sort of Free-hold, we could not at once, and without any Consideration, turn the present Possessors out of their Free-hold; therefore,

from such an Enquiry the Nation could not expect any great immediate Advantage; at least, not such a great and immediate Advantage, as would be sufficient for making good the Deficiency in the Supplies for this next ensuing Year.

I hope, Sir, I have said enough for convincing every Gentleman, that the Method now under our Consideration, for making good the Supplies of this next ensuing Year, will in all probability be sufficient for the End proposed; and that of all the Methods that have been proposed, or so much as hinted at, it is the least burdensome, and the least liable to occasion any fresh Murmurs among the People; therefore it is certainly the Method we ought to chuse. It is, indeed, in my Opinion, the only Method we have to chuse; for, I think, I have shewn, that the other two Methods that have been mentioned, are both impracticable; and as I join in that which seems to be the general Opinion, that the Supplies we have already voted ought to be made good, I think I am both in Honour and Conscience bound to give my Assent to the Proposition now before us, because it is the only Method we can chuse for doing that which every Gentleman acknowledges ought to be done.

This is the Substance of the several Debates which happened in this Affair relating to *Sweets*; in which those who were for the Duty, got the better upon every Division, except one, which was in relation to that Clause in the Bill, whereby it is provided that nothing in that Act contained should extend, or be construed to extend, to charge with any Duty such Wine as the Owners or Occupiers of *British* Vine-Yards should make from the Juice of *British* Grapes only growing thereon; for the Adding of any such Clause, or the Exempting of such Liquors from the Duty on *Sweets*, was likewise opposed by most of those who were Favourers of the Duty and Bill; however upon a Division it was carried against them, and the Clause, as it now stands, was accordingly inserted in the Bill.

Having now given an Account of all the important Debates which happened in the Committees of Supply and Ways and Means, or that were occasioned by the Resolutions of either of these Committees, we shall proceed to give an Account of the Proceedings and Debates relating to the Murder of Capt. *Porteous* by the Mob at *Edinburgh*.

In our *Magazine* for *June*, we gave an Account how that Affair came first to be introduced in the House of *Peers*; and also the several Resolutions which that House then came to, the last of which was, That all the Persons then ordered to attend, should attend on that Day Month,

In

716 PROCEEDINGS, &c. in the last Session of PARLIAMENT.

In the mean Time, viz. On *Thursday* *March* 3. the D—ke of N—tle presented to the House, an authentick Copy of the Trial of Capt. *Porteous*, and all the Proceedings relating thereunto; and also the Accounts transmitted hither of the Murder of Capt. *Porteous*, and what passed thereupon; together with the Orders and Directions sent from hence, relating thereunto; as, likewise, a Copy of the Reprieve of the said Captain, granted by her Majesty as Guardian of the Kingdom; all in pursuance of the 4th. and 5th of the Resolutions before-mentioned. And on *Thursday*, *March* 10, the several Persons attended according to Order, and were called to the Bar and sworn: After which, the House resolved itself into a Committee to consider of the Affair, and agreed to 15 several Questions or Interrogatories; upon which, the Lord Provost, and four Bailiffs of the City of *Edinburgh* in the Year 1736, were examined. The same Day a Message was sent to the H—se of C—s, desiring they would give Leave to L—t G—l *W—de*, and P—ck L—y, Esq; Members of that House, to attend to be examined in relation to the Murder of *Porteous*; and Major *Poole*, whose Name had been mentioned in the aforesaid Examination, was ordered to attend on *Wednesday*, then, next.

On the 16th, *Thomas Young*, Treasurer of the City of *Edinburgh* in the Year 1736, whose Name had likewise been mentioned in the aforesaid Examination, was ordered to attend if in Town; and, on the 17th, the House having, again, resolved itself into the said Committee, and agreed to eleven Questions or Interrogatories, upon which Capt. *Lynd*, who was Captain of the City Guard of *Edinburgh*, the Night *Porteous* was murdered, was examined; after which, the Lord Provost was again called in and examined as to any, and what Endeavours had been used by him, to discover those concerned in the Murder of *Porteous*? and, as to some other Matters, which had occurred after that Riot; and, the above-mentioned P—ck L—y, Esq; having had Leave from the H—se of C—s, did attend, and was examined as to his Knowledge of what happened relating to this Affair; as was also General *Moyle*, Commander in chief of his Majesty's Forces in *Scotland*, at the Time this Affair happened.

On the 18th, Col. *Duroure*, Lieut. Colonel to the Regiment of Foot, commanded by Lieutenant General *Weibam*, was ordered to attend; his Name having been mentioned in the former Examinations; and the same Day, a Motion was made by the L—d L—ll, and supported by the D—ke of M—gu, the L—d C—t, and the L—d B—st, That the Lord Justice Clerk of *Scotland* might be ordered to attend; which Motion was opposed by the E—l of L—s, the L—d H—y,

the D—ke of N—tle, the D—ke of A—le, and the E—l of W—ck; and the D—ke of N—tle having moved to adjourn, which is always a Sort of previous Question, the Question was put upon that Motion, and was carried for adjourning,

Contents.		Not contents.	
Present	45	Present	39
Proxies	20	Proxies	9
In all	65	In all	48

The chief Reason given for this Motion, was founded upon a Letter of L—t G—l *W—de*'s, then on their Table, from which it appeared, that it would be necessary for them to examine the Lord Justice Clerk, and as the Session would not probably last long, they ought to send for him as soon as possible; because, the sooner they sent for him, the sooner they would have him: To which it was added, that it appeared likewise, from the Trial of *Porteous*, then, on their Table, that it would be necessary to examine the Lord Justice Clerk, who was the chief and presiding Judge upon that Trial.

To this it was answered, that the ordering of any particular Gentleman to attend, would be a Sort of Impeachment upon his Character, which was a Slur they ought not to throw upon any Gentleman, without some Appearance of Guilt; for, as they would scorn to screen any Man, against whom there appeared the least Suspicion; so, they would scorn to attack any Man in an indirect Manner. That, as to the Letter upon their Table, they could not properly make it a Foundation for any Order, till they had examined G—l *W—de* himself, as to the Contents; and, as to the Trial of *Porteous*, the Lord Justice Clerk was but one, of four or five Judges then upon the Bench, and ought not therefore to be made to answer singly for any Part of that Trial.

Tho' this Motion was not then agreed to, yet, as the Lord Justice Clerk was the chief Officer of State in *Scotland*, at the Time of *Porteous*'s Murder; and, consequently, the chief Person entrusted with the Civil Government of the Country; and, as it appeared by all the Examinations, that he was neither in Town when that Mob happened, nor came to Town when he was apprized of the Tumult, tho' very near to it; therefore, it is probable this Motion would have been revived, as soon as G—l *W—de* was examined, and, very probably, would then have been agreed to; but on the *Monday* following, the D—ke of N—tle moved, That the aforesaid Lord Justice Clerk, together with the Lord *Dun* and the Lord *Royson*, the two Senior Judges of that Court, should be ordered to attend; which Motion was agreed to; and they were ordered to attend accordingly, on *April* 21.

L—t G—l *W—de* and several others

were afterwards examined, and the Committee having considered their several Examinations, came to several Resolutions, which were reported and agreed to, on Friday, April 1; whereupon, *Alexander Wilson*, Esq; the aforesaid Lord Provost of Edinburgh, was ordered to be taken into the Custody of the Gentleman-Usher of the Black-Rod; (but upon April 19, following, he was admitted to Bail, in order to prepare himself, for being heard by his Counsel, as after mentioned.) And a Bill was ordered to be brought in, *To disable the said Alexander Wilson, Esq; from taking, holding, or enjoying any Office or Place of Magistracy in the City of Edinburgh, or elsewhere, in Great Britain; and for imprisoning the said Alexander Wilson; and for abolishing the Guard kept up in the said City, commonly called The Town-Guard; and, for taking away the Gates of the Nether-bow Port of the said City, and keeping open the same.*

The several Questions or Interrogatories agreed to in this Committee of Enquiry were, as before-mentioned, all taken down in Writing, as were also the Answers made to them by the several Gentlemen that were examined at the Bar; but, as we have not Room to insert them *verbatim*, and as the Substance of what was then said, as well as of what was afterwards said by the Witnesses for and against the Bill, at the Bar of each House, will appear from the several Debates relating to this Affair, we think it needless to give any Summary of what was said by the Evidence on either Side of the Question.

On April 4, the Bill above-mentioned was, according to Order, brought in, and read a first Time, and was ordered to be read a second Time; but, as the Lord Provost, and, afterwards the City of Edinburgh, were admitted to be heard by their Counsel against the Bill, upon its being read a second Time; therefore the second Reading was put off, till the Beginning of May, in order that they might have Time to bring up Witnesses, and instruct their Counsel. For this Reason, we shall give an Account of a Motion and Debate, relating to the Sentence passed upon *Porteous*; and, of that grand Affair relating to the Scotch Judges; both which happened in the mean Time; before we give any farther Account of the Progress of this Bill. However, as many of our Readers may be curious to see this Bill, in the Form in which it was first passed by the House of Peers, we shall give them a Copy of it as follows, *viz.*

WHEREAS upon Tuesday, September 7, in the Year of our Lord 1736, there was a most seditious and outrageous Riot in the City of Edinburgh, in that Part of Great Britain called Scotland, notoriously concerted and carried on by great Numbers of

wicked, disorderly, and blood-thirsty Persons, who did, with open Force and Violence, seize the Arms of the City Guard, possess themselves of the City Gates, and, by setting fire to and breaking open the Door of the Tolbooth of the said City, did unlawfully and audaciously rescue and set at large several Criminals therein confined: And whereas Captain *John Porteous*, then a Prisoner there under Sentence of Death, but graciously reprieved by the Queen's most Excellent Majesty, as Guardian of the Realm, was by the said Rioters in a cruel Manner dragged from the said Prison, and most barbarously hanged by the Neck, and murdered, in manifest Violation of the publick Peace, in Defiance and Subversion of legal Government, in high Contempt of our Sovereign Lord the King and his Laws, and to the most presumptuous and unparallel'd Obstruction of the Royal Mercy: And whereas for some Time before the Committing of the said Murder and Riot, it was commonly reported in the said City of Edinburgh, that some such atrocious Fact would be attempted, which, by proper Care in the Magistrates, Citizens, and Inhabitants of the said City, might have been prevented; notwithstanding which, *Alexander Wilson*, Esq; then and now Provost of the said City, then actually resident in the said City, and fully apprized of the said wicked Design, did not take any Precautions to prevent the said Murder and Riot, nor use the proper or necessary Means to suppress the same, or to preserve the Peace of the said City; or, after the Perpetration of the said Fact, to discover, apprehend, or secure the Authors, Actors, or Abettors thereof, in manifest Violation of the Trust and Duty of his Office of chief Magistrate of the said City; nor were any Means or Endeavours used by the Citizens and Inhabitants of the said City, to prevent or suppress the said notorious Riot, or to hinder the said inhuman and barbarous Murder, or to discover the Persons concerned therein, in order to bring them to Justice; Now, in order to express the highest Detestation and Abhorrence of the said Murder and Riot, and to the End that the said enormous Misbehaviours and Neglects of Duty, herein before mentioned, may not go unpunished, and that other Persons may not presume, through Hopes of Impunity, to be guilty of the like for the future; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said *Alexander Wilson* be, and he is hereby, from and immediately after the passing this Act, disabled, and made incapable to have, hold, exercise, or enjoy the said Office of Provost of the said City of Edinburgh: And that he the said *Alexander Wilson*

Wilson be, and he is hereby forever hereafter, disabled, and render'd incapable, to have, hold, exercise, or enjoy any Office or Place of Magistracy in the said City of *Edinburgh*, or elsewhere, in *Great Britain*.

And it is further enacted by the Authority aforesaid, That a new Provost be immediately chosen in the room of the said *Alexander Wilson*, in the same Manner as if the said *Alexander Wilson* was naturally dead *; and that he the said *Alexander Wilson*, shall be detained and kept in close and safe Custody, without Bail or Mainprize, during the Space of (one whole Year) to be accounted from the Day of passing this Act, in any Gaol or Prison within the Kingdom of *Great Britain*, to the Custody of the Gaoler or Keeper wherof the said *Alexander Wilson* shall from time to time be committed, in Pursuance of this Act, by any Warrant under the Hand and Seal of any Secretary of State, of His Majesty, His Heirs, or Successors, which Warrant or Warrants any Secretary of State for the Time being is hereby authorized and empowered to make.

And whereas the said City of *Edinburgh* hath, for many Years past, kept up a Military Guard, called the *Town Guard*, which upon the said late unhappy Occasion has appeared to be of no Use: And whereas, for want of an open Communication between the said City, and a Place called the *Cannongate*, adjoining thereto, wicked and disorderly Persons are the more encouraged (especially in the Night, when the Gates of the *Nether-Bow Port* of the said City are shut) to attempt to commit Disorders and Riots in the said City: And whereas, it is just and necessary, that the Power of keeping up the said Guard should be taken away, and that the said *Nether-Bow Port* should be kept open, Be it further enacted by the Authority aforesaid, That from and after the first Day of *July 1737*, the said Military Guard, commonly called the *Town Guard*, be taken away, and abolished, and no longer kept up; any Law, Statute, Prescription, or Usage to the contrary in any wise notwithstanding: And that the then Provost and Bailiffs of *Edinburgh*, on, or before the said first Day of *July 1737*, shall cause the said Gates of the *Nether-Bow Port* to be taken down, and that the Communication between the said City and the *Cannongate*, be for ever hereafter kept open, both by Night and by Day; any Law or Usage to the contrary notwithstanding.

On *Tuesday, April 26*, after several Lords had spoke for, and against the Sentence pronounced against *Porteous*, by the High Court

of *Jusiciary* in *Scotland*; a Motion was made for declaring it erroneous. In this Debate, the Arguments for the Motion were chiefly, as follows, *viz.*

A My Lords, altho' it cannot be supposed that we have, or can have, all the Lights which Time and Circumstances may hereafter discover and manifest, with regard to the Trial of the unfortunate Capt. *Porteous*, and the Sentence passed upon him; yet, I think, we have sufficient for shewing us, that that Sentence was extremely rigorous, to give it no worse a Name: and, as it is an Affair in which the Peace and Tranquillity of this Island, and the Safety of his Majesty's Subjects, are very much concerned, I am humbly of Opinion, we ought not to pass over that severe Sentence without some Censure.

B In that Trial, my Lords, the first Thing that occurs to our Notice is, the Interlocutory Sentence passed upon the Relevancy of the Libel, and for directing what Matters should be brought in Proof at the ensuing Trial; with respect to which, there appears to me at first View, two very material Objections. The first proceeds from an Error or Mistake, as I imagine with regard to the Law of *Scotland*; and, indeed, of every well regulated Society in the World; and the other is, in my Opinion, an evident Piece of Injustice done to the unfortunate Prisoner.

C As to the first, my Lords, by that Interlocutory Sentence they determined, That the Pannel, or Prisoner, having at any of the Times and Places, libelled, fired a Gun among the People assembled at the Execution, or having given Orders to the Soldiers under his Command, to fire, and thereupon, they, the Soldiers, or any of them, having accordingly fired; and, upon the firing, either by himself, or them, the Persons mentioned in the Indictment, or any of them, were killed or wounded; or, the Pannel's being Art and Part of any of the foresaid Crimes, are, *separatim*, relevant to infer the Pains of Law. I do not pretend, my Lords, to be fully acquainted with the Laws of *Scotland*, but from the Law of Reason, which I take to be the Law of every Country, and, I hope, is the Law of *Scotland*, I must think this Determination too general; I think there ought to have been an Exception, with regard to his having been first attacked or assaulted by the Mob; and, therefore, I must think these Words, or some such Words, ought to have been inserted; 'Unless it should appear, that, he or his Party were violently attacked or assaulted by the Mob, and brought into Danger of their Lives, or of being disabled from performing their Duty.'

* N. B. What follows was left out in the H—se of C—ns, and instead thereof, only one short Clause inserted, for subjecting the City of *Edinburgh* to a Fine of 2000 l. to be applied to the Widow of the said *Porteous*.

I am sorry, my Lords, we should ever have Occasion to employ a military Force, or any Thing like a military Force, in the Execution of the Law; or, in bringing any Criminal to condign Punishment; but, in this Country, as well as in every other Country, the Populace are sometimes instigated by selfish and designing Men, to oppose the Distribution of Justice; or, in some Cases, perhaps, to take upon themselves an usurped Power of distributing Justice; and, when any such Case, as either of these happens, it becomes necessary for the Magistrate to make use of a military Force, or something like it, in order to execute the Laws, or to protect his Majesty's innocent Subjects, who happen to be so unfortunate as to incur the Resentment of an enraged and unruly Populace. When either of these happens to be the Case, I hope it will never be established as the Law of any Part of this Island, or of any of the Dominions belonging to it, that those, who are called to the Assistance of the Civil Magistrate, shall be hanged for Murder, in Case they should find themselves under a Necessity of firing upon those who violently attack or oppose them in the Execution of their Duty; for, if this were established, or supposed to be established, as the Law of the Kingdom, it would not only greatly encourage Tumults and riotous Assemblies, but, would make it impossible for the Civil Magistrate to suppress them, or to prevent whatever Mischief, the Fury of a Mob, the Malice of private Men, or, perhaps, the Desire of Plunder, might suggest. Even the Civil Magistrate himself would run the Risk, either of having his Brains knock'd out by the Mob, or of being afterwards hanged by the Law, if he should take the proper Measures, or give to his Assistants the proper and the only effectual Orders, for defending themselves and dispersing a riotous Assembly. For this Reason, as the Law permits the carrying of Fire-Arms to those who are called as Assistants to the Civil Magistrate, it must certainly, in some Cases, allow them to make the proper Use of those Arms; and, I cannot think any Case can happen more necessary, for allowing them that Liberty, than when some of them are wounded, and their Bones actually broke, by the Stones thrown at them by the Mob; which was the Case when that Accident happened, for which *Porteous* was condemned to die, by the Sentence now under our Consideration.

As I take it to be the Law of every Country, that neither the Civil Magistrate, nor any of his Assistants shall be deemed guilty of Murder, if they happen to kill any of those who oppose them, or, who assault them in the Execution of their Duty, so I find, my Lords, this Case is particularly regulated in *Scotland*, by an express Act of Parliament

made for that Purpose; for, by an Act passed in *Scotland* in the Reign of *James VI.* it is expressly enacted, That, neither the Magistrates, nor People of *Edinburgh*, nor any Person assisting them, in preserving the Peace, and preventing Riots or Tumults, shall be so much as prosecuted for the wounding or killing of any Person upon such Occasions; which is an Act so much adapted to the Case of *Porteous*, that, I am surprized it was not so much as mentioned at his Trial. Whether this Law was ever repealed by any future Act of Parliament, is what I do not know; but, if it was never repealed, if it is a Law still in force, I am of Opinion it might have been pleaded even in Bar of the Indictment, because all such Persons are by that Act indemnified, not only, against any Punishment, but, against any Prosecution to be commenced against them for the Wounding or Killing of any Person, while they were assisting the Magistrates to preserve the Peace, or to suppress any Tumult.

The other Objection, my Lords, is against that Part of this Interlocutory Sentence, which directs, and really confines, the Prisoner, as to what Evidence he was to bring for his Vindication. What may be the Method of such Trials in *Scotland*, I do not know; but in this Country, it is certain the Prisoner is allowed to examine whatever Witnesses he pleases to call; and, to prove all those Facts and Circumstances he may think proper for his Justification. After all his Witnesses have given their Evidence, it belongs to the Jury to consider, whether the Facts and Circumstances proved, can any Way tend to prove the Innocence of the Person accused, or to alleviate the Crime laid to his Charge; but, surely, the Court is not to tell the Prisoner, or the Jury, that, he shall not be allowed to examine any Witness as to such a Fact, or such a Circumstance, because it no Way relates to the Matter in Hand; for, sometimes, by examining a Witness as to a Fact, seemingly, very remote, another Fact or Circumstance comes to light, by which the Innocence of the Person accused may be made manifest. For this Reason, I must think it a most dangerous Method of Proceeding, to lay any Restraint upon a Prisoner, with respect to the Points he is to be admitted to prove at his Trial; and, it must be much more so, to confine him to those Facts and Circumstances only, which happened at the Time, the Crime he is accused of was committed: In the Case now before us, surely, the unfortunate Prisoner ought to have been allowed to adduce what Evidence he could, with respect to all, Circumstances which might any Way relate to the Crime of which he was accused, whether those Circumstances happened at, or before or after, the Time, the Crime was said to have been

been committed; in which Case he might, perhaps, have proved, that he had express Orders from the Magistrates to fire upon the Mob, if they made the least Attempt to assault him, or his Guard, or to rescue the Criminal from the Hands of Justice; and, if he had proved his having had such Orders, sorely, he ought not to have suffered for obeying them; for upon the Trial it was fully proved, that, both he and his Guard were assaulted, and some of them wounded, by the Mob, before he or any of the Soldiers attempted, or so much as threatened to fire; and, I think, it appears upon the Trial, that a Sort of Rescue was actually made; for, the Duty of the Guard was not only to see the Criminal hung up, but, to see him hang by the Neck till dead; that is, till the Executioner should by Order of the proper Magistrate cut him down, which never was done: The Criminal, as appears upon the Trial, was cut down by one of the Mob, and was cut down, before any Magistrate had given an Order for cutting him down; which was really, in my Opinion, a Sort of Rescue, and such a Rescue as would have justified the Guard's firing upon those that were guilty of it, if they had had proper Orders for that Purpose.

From what I have said, my Lords, it appears, that, the Prisoner in this Case, was debarred the Privilege of proving, what might have justified him upon his Trial; which was, in my Opinion, doing him a very great Piece of Injustice in the very first Step of his Trial; and, in all the other Parts of the Trial, the Proceedings against him seem to have been carried on with the utmost Rigour; for, considering how widely the several Witnesses differ from one another, — and, how easy it is for Men to mistake Words upon such an Occasion, as well as to mistake the firing of one Piece for the firing of another, I must think the Jury shewed him no Favour in their Verdict. However, as they likewise found it proved that the Pannel and his Guard were attacked, and several of the Soldiers bruised and wounded, which was a Sort of Special Verdict, they left it to the Judges to do as they thought fit, upon considering and arguing that Special Verdict; and considering, that there was a Possibility of the Captain's being innocent, notwithstanding the Proof that was against him, the Judges ought, I think, to have allowed of that Attack or Assault as an Excuse, so far at least as to prevent his being deemed guilty of Murder; therefore, I hope, your Lordships will agree to this Resolution, That the Trial and Condemnation of Capt. Porteous was erroneous in several Particulars.

To this 'twas answered in Substance as follows, viz.

My Lords, as I am convinced there was no Secret or Mystery in any Part of the Trial

now under your Consideration, as it was a publick open Trial according to the Laws and the common Methods of Proceeding in such Cases in that Country, therefore, I believe, we have now all the Lights before us which any future Time can discover; and I think we have sufficient Lights for shewing us that the Trial was regular, and the Sentence just. I shall readily agree with the noble Lord, that the Peace and Tranquillity of the Island, and the Safety of his Majesty's Subjects, were very much concerned in the Issue of that Trial; for considering how full the Proof was against the Prisoner, considering how manifestly his Guilt appeared to every Man present at the Trial, if he had been acquitted either by the Jury or by the Judges, I do not know but it might have occasioned an Insurrection in that Part of the Island; and it would have given Occasion to every hot-headed Officer sent upon any Command, to have murdered his Majesty's Subjects upon the least Affront offered to him by the Populace.

I have, my Lords, as great an Aversion to Mobs, and to all Sorts of riotous Proceedings, as any Man can have, as any Man ought to have; and I as heartily wish we never had Occasion to employ any Thing like a military Force in the Execution of the Law, or in bringing any Criminal to condign Punishment; yet I think the Liberty of firing at Random upon any Multitude of his Majesty's Subjects, is a Liberty which ought to be most cautiously granted, and never made use of but in Cases of the most absolute Necessity; and in this Way of Thinking I am supported by the whole Tenor of the Laws of *England*. It is now 3 or 400 Years since Fire Arms first became in use amongst us, yet the Law has never suffered them to be made use of by the common Officers of Justice. Pikes, Halberts, Battle-axes, and such like, are the only Weapons that can be made use of according to Law by such Officers; and the Reason is extremely plain, because with such Weapons they can seldom or ever hurt, much less kill, any but such as are really opposing or assaulting them; whereas if you put Fire Arms into their Hands, and allow them to make the proper Use of such Arms, they may as probably hurt or kill the Innocent as the Guilty; nay in Cities and Towns, where such Tumults generally happen, they may kill People sitting in their own Houses, or looking innocently over their Windows, which all Persons are apt to do, but especially Women and Children, when they hear any Hubub or Noise in the Streets; and which was really the Case in the Affair now before us; for one Woman was killed in her Master's House, by her being unfortunately, but innocently, at the Window when the Soldiers fired.

For

For this Reason, my Lords, I hope it will never be laid down as a Maxim in this House, that any Party of Soldiers, or others, assisting the civil Magistrate, has a Power to fire at Random upon a Multitude of his Majesty's Subjects, or in the Streets of any Town or City; or that any Magistrate has in any Case an unconfin'd Power to give them any such Orders; and much less to give them Orders to fire upon a Multitude which was at first lawfully and innocently assembled together; for there are two Sorts of Mobs or Assemblies of the People; one is, when a Multitude of People assembles together upon any lawful or innocent Occasion, and afterwards happens to become riotous; and the other is when a Multitude of People assembles together with Design to commit some unlawful or wicked Action. With respect to the former, the most gentle Measures ought to be made use of for dispersing them, because many innocent Persons being inveigled in the Crowd, it may be some Time, before they can possibly get away; but with respect to the latter, as all that are assembled together upon such an Occasion must be some way guilty, therefore more rough and violent Measures may be made use of for dispersing them, and for preventing the Mischief they intended. But in both these Cases the Law is now certain and indisputable. Your Lordships all know that by a late Statute, which is in force in *Scotland* as well as *England*, the Power of the civil Magistrate, in the Case of any Mob or riotous Assembly, is fully and distinctly regulated; yet even by that Law, which I have often heard complained of as a Law not tolerable in a free Country, there is no express Power given to the Magistrate or his Assistants to make use of Fire Arms; so cautious was the Legislature, even at that Time, when Tumults were more frequent and more dangerous than they are at present, of giving a legal Authority for the making use of such Weapons. After reading the Proclamation, and after giving the Mob an Hour's Time to disperse themselves, and to depart to their Habitations or lawful Business, the Peace Officers may then, by that Law, seize or disperse those who shall afterwards continue unlawfully assembled; and if any Person by resisting them shall happen to be killed, maimed or hurt, the Peace Officers and their Assistants, are indemnified; but I doubt much if a Magistrate would be indemnified, even by this Law, should he take the short Way of dispersing a Mob, by ordering his Assistants to fire among them, and should thereby kill any Person who had committed no Overt-act of Resistance; especially if it should appear that he had fired upon the Mob without any Necessity for so doing, and even without any extraordinary Provocation.

In such a Case, my Lords, if the Magistrate, or any of his Assistants who did fire, were to be prosecuted by the Laws of *England*, I believe he would be brought in guilty, at least of Manslaughter; and, as what is deemed Manslaughter by the Laws of *England* is generally deemed Murder by the Laws of *Scotland*; as every Killing is deemed Murder by the Laws of that Country, unless it happens by Chance, or *se Defendendo*, therefore the Judges had no Power by the Laws of that Country to add any such Exception as has been mentioned to the Interlocutory Sentence; nor did the Prisoner pretend to found his Innocence or his Defence upon any such Exception; for both he and his Lawyers were very well convinced there was no Pretence for such an Argument from any of the Laws of his Country. And with respect to that of King *James VI.* which was mentioned by the Rev. Prelate, I am not at all surprized it was not pleaded, or so much as mentioned by the Counsel for the Prisoner; on the contrary, I am rather surprized it was not made use of against him; for from that Law it appears, that his firing, or giving Orders to fire, was downright Murder. That Law was made for preventing or quelling Riots and Tumults within the City of *Edinburgh*; for which Purpose the Magistrates of that City are enabled, with the King's Allowance, to raise Soldiers on Pay, to use *Haquebuts*, and all other Arms when they shall think expedient; and if any Person resisting the said Magistrates in the Quelling of any Riot, shall be hurt or slain, the Magistrates and their Assistants are indemnified; providing such Hurt or Killing was with long Weapons, and not by shooting *Haquebuts*, or the like. I need not acquaint your Lordships, that *Haquebut* was the Name then used in that Country, and formerly in this, for Fire Arms, and that by long Weapons was meant Halberts, Battle-axes, and such Weapons as are commonly used by all Assistants to Officers of Justice in that Part of the Island as well as this. Thus your Lordships see that Killing with any Sort of Fire Arms was expressly excepted out of that Law; and therefore that Law was so far from being in favour of the Prisoner, that there might from thence have been drawn a very strong Argument against him.

I know, my Lords, it will be said, that the Officers of Justice and their Assistants, especially his Majesty's Troops, when they happen to be called to the Assistance of the civil Magistrate, are in a very unlucky Situation, if they are not to be allowed to make use of the Arms in their Hands for preventing their being knock'd on the Head with Stones and Brick-bats. This I shall readily grant, and I wish some proper Regulation were made for the Direction and Security

curity of the Gentlemen of the Army; but we are now to consider the Law as it stands at present; and as the Law now stands in *England* as well as *Scotland*, if an innocent Person suffers Death by Firing, especially if that Firing was before any Proclamation read, the Person that fired, and he who gave him Orders to fire, might both be prosecuted for Murder; I am afraid neither of them would have any Resource but in the King's Mercy. The Soldiers may upon such Occasions make use of their screwed Bayonets for dispersing or seizing the Rioters; by so doing they can hurt none but those that resist them; but I would not advise them to fire, unless they should find themselves in very great Danger of being over-powered, and perhaps murdered by the Mob.

As for the other Objection against this Interlocutory Sentence, it is founded entirely, my Lords, upon the Method of Proceeding, and may be an Objection against the Laws of that Country, but can be no Objection against this Trial in particular. In that Country the Prisoner has a Copy of his Libel or Indictment delivered to him, and has Time allowed him to consider and consult with his Lawyers what Defences he thinks proper to make. These Defences are afterwards considered by the Court, and if they contain any Facts that can any manner of way contribute towards his Justification, he is allowed Process for summoning Witnesses to prove such of them as are denied by the Prosecutors; but if they be such as can no manner of Way contribute towards his Justification, or such as are admitted by the Prosecutors, he is not allowed to take up the Time of the Court with impertinent or needless Examinations; and the Reason of this is, because the Examination of Witnesses is in that Country carried on in a more tedious, but a much more certain and solemn Manner, than in this. The Evidence of every Witness is taken down in Writing by the Clerks at the Table, and after he has been fully examined and cross-examined, his Evidence is read over to him, and he must sign or put his Mark to it, in order that it may remain as a Record against him, in case it should ever afterwards appear that he had wilfully perjured himself in the least Article of his Evidence. Tho' this Method carries along with it a great Security against Perjury, yet it has laid the criminal Courts there under a Necessity of restraining the Prisoner, and confining him to the Proving of those Facts that are material, and denied by the Prosecutor; but this can never be any Disadvantage to a Prisoner, or to a Person indicted, unless the Court should exclude him from proving what was really material; and if the Court should do any such Thing, the Jury would probably consider it in their Verdict.

This Method of Proceeding, my Lords, may perhaps appear a little extraordinary to most of your Lordships, who have always been accustomed to a different Method; but this Method has certainly some Advantages, which the Method observed in this Country has not; and let this Method be good or bad, it is the Method of Proceeding established by the Laws of that Country, which cannot be altered by any Court or by any Judge. If it could be said that the Court of Justiciary in *Scotland* had debarred *Porteous* from proving any Facts he desired leave to prove, some Objection might then be made to the Trial; but the Truth is, as will appear upon the Face of the Trial, there was not any Fact he desired leave to prove, but what was either admitted by the Prosecutors, or he was admitted to prove; and particularly as to his having had previous Orders from the Magistrates, all he contended was, That he had Orders from the Magistrates to make his Guard charge with Shot, and even to fire among the Mob in case of Resistance; and he did not so much as desire, nor was there any Occasion for his desiring leave to prove this Fact, because it was admitted by the Prosecutors in their Pleadings, and was likewise expressly admitted in their printed Information; nay there was not any one Fact, nor any Circumstance in his Behaviour, either before or after the Committing of that Crime, upon which he could pretend to lay the least Stress, with respect to his Vindication, but what was either admitted by the Prosecutors, or he was admitted to prove; so that I am surprized to hear it so much as insinuated, that the least Injustice was done him in this Respect. On the contrary, by the whole Tenor of the Trial, it appears, he rested his Innocence entirely upon a flat Denial that he either fired, or gave Orders to fire.

And now, my Lords, with respect to the Jury, I must think it a little hard; I believe it is not usual for your Lordships to pass any Censure upon the Verdict of twelve Men delivered upon Oath. Besides, these twelve Men were all either Gentlemen, or substantial Merchants or Tradesmen; they were none of the Mob, nor were there any *Talesmen* among them: They have no such Thing in that Country; when it comes to a Gentleman's Turn to attend upon a Jury, he must attend, he cannot excuse himself by giving a *Sbilling* or *Half a Crown* to the Sheriff's Officer. These Gentlemen were, perhaps, personally acquainted with many of the Witnesses; some of them were, perhaps, themselves at the Execution; and therefore, it must be allowed they were better Judges, what Credit was to be given to the several Witnesses, than any of your Lordships can be. It was positively affirmed by several Witnesses, that they saw *Porteous* fire; it was positively affirmed by several

several others that they heard him give Orders to his Guard to fire; other Witnesses said they did not see him fire, and, that they heard him call to his Men not to fire. Both these might have been true, but suppose they could not, surely the Gentlemen of the Jury were better Judges which Side they ought to give credit to, than any Lord of this House can now pretend to be; and their having brought in a Special Verdict, is to me a full Proof they were, what every Jury ought to be, altogether impartial.

But, my Lords, from this Special Verdict, I find, an Occasion is taken to find fault with the Severity of the Sentence. I should be glad to know from those noble Lords, who have found fault with this Sentence, what they think the Judges might have done; for, in my Opinion, they could do nothing but what they have done. I have told your Lordships we have no such Thing as Manslaughter in Scotland; the Jury by their Verdict had found the Prisoner guilty of killing and wounding a great many of his Majesty's Subjects, but that he had been provoked by the Throwing of Stones, by which some of his Men were wounded. What could the Judges do in this Case? They must either determine, that the Killing was Murder, or they must have said it was *se Defendendo*, or by Chance: No Law in the World could have justified them, in determining that the Prisoner had killed these People by Chance, or *se Defendendo*; therefore they were obliged to determine it was Murder, and to pass Sentence accordingly. They might perhaps have recommended him to the Crown as a proper Object of Mercy; but I do not find they did, and I must beg leave to say, I do not think they had any Reason to do so; for, tho' I would go as far as any Man, in justifying an Officer for executing his Orders, and performing his Duty with Courage and Resolution; yet, in our own Dominions, and among our own Subjects, except in Cases of an open Rebellion, I think, a great Tenderness ought to be shewn towards the People: I am sure a Man of real Courage always will; and tho' the unfortunate Man, whose Trial is under our Consideration is now dead, yet I cannot help saying, that upon the Occasion for which he was afterwards condemned to die, he behaved more like a Madman, than like a prudent and brave Officer.

I shall not pretend, my Lords, to justify every Part of the Law of Scotland, or every Method they have of proceeding in their Courts of Justice. There is not, there never was, I believe, a Body of Laws in the World, against which a great many Objections may not be made. In every Country, the Inhabitants are apt to extol the Justice and Perfection of their own Laws, and those who are of a different Country are sometimes apt

to mistake the greatest Beauties for great Imperfections. I do not pretend to understand the Law of this Country, it is none of my Business; but I think I could point out several Imperfections; I shall only mention one, which I really take to be not only an Imperfection but an Absurdity. By the Law of this Kingdom, if a rich Man is convicted of Felony, the Sheriff is to be a great Gainer by his Conviction; he may perhaps acquire an opulent Fortune by such Conviction, and yet, that very Sheriff is the Man who is to name the Jury who are to try him, and may name such Persons as he thinks fit. According to this Method, a rich Man must take great Care never to be indicted for Felony, or at least, never to let it come to a Trial, however false and malicious the Prosecution may appear to be; for, if he should allow it to come to a Trial, I think he stands more than an equal Chance of having a Verdict against him; because as soon as that Verdict is returned, the Sheriff becomes his Heir, or, at least, his Executor, and may immediately take Possession of his personal Estate. I could mention many other Imperfections, and, perhaps, Errors, in the Law of England; and, I do not doubt but there are as many in the Law of Scotland; but, neither the one, nor the other ought to be altered in any material Point, without very mature Consideration; otherwise we may happen to create two new Imperfections for every one of the old, we attempt to remove. The Laws of Scotland, upon which the unfortunate Man, whose Case is now under our Consideration, was condemned, may be wrong; the Methods of Proceeding, by which he was tried may be severe; but such as they are, they were then, and are still, the Laws of that Country, according to which the Judges were bound by their Oath to proceed and determine; therefore, if your Lordships come to any Resolution relating to that Trial, your Resolution ought, in my Opinion, to be, That it was regular and just; and, such a Resolution will, I am sure, contribute more to the Peace and Tranquillity of the Kingdom, and to the Safety of his Majesty's Subjects, than any Censure you can put upon it.

As this Motion was not much insisted on, there was not any Thing said by Way of Reply, nor any Division upon it.

The chief Speakers for the Motion, were the L^d C[—], the L^d B[—], the E[—]l of W[—], and the L^d L[—]. The L^d C[—], and the B[—] of S[—] spoke against the Trial, but thought they had not sufficient Lights to pass any Censure upon it; and the chief Speakers against the Motion, and in Favour of the Trial, were, the L^d H[—], the E[—]l of F[—], the E[—]l of I[—], the D[—]ke of A[—], and the E[—]l of S[—]gb. (See the Trial at large, Vol. V. p. 498.) Upon

Upon Occasion of this Debate, the Duke of A—le, proposed, That the Judges should be ordered to deliver their Opinions upon the following Questions, viz.

1. If an Execution were to be performed in *Stocks-Market*, and a Guard of regular Troops drawn up there by lawful Command, to prevent a Rescue of the Criminal; and, if several Stones thrown from among the Crowd should light among the Soldiers, by which several of them should be bruised and wounded; Would such a Guard be guilty of a Crime, if by firing among the Crowd, they should kill several Persons? And, if guilty of a Crime,—What Crime it would be?

2. Upon Occasion of a Riot in, or near a Town, where a Regiment is quartered, should the Sheriff of the County order the Commanding-Officer to assemble the Regiment, and march to his Assistance against the Rioters, Is such Officer obliged to obey? Or, may he obey? And what Penalty there is, if he should refuse?

3. If a Detachment of the Army, is ordered to prevent a Number of People from pulling down Houses, or from committing any other illegal Action, and that the Commanding-Officer has Orders to repel Force by Force, Can such Detachment lawfully make use of Force by Firing, unless they are attacked by the Rioters?

4. In Case Rioters should be pulling down Houses, or doing any other Mischief in one Part of the Town, and a Detachment of the Army should be ordered, in Aid of the Civil Magistrate, to march thither to disperse them; and a Number of People should assemble, and stop up such of the Passages through which such Detachment must necessarily pass; Whether such Detachment may use Force to disperse the People so assembled, in order to pass that Way, without being first attacked by them?

Which was agreed to, and ordered accordingly.

Then his Grace proposed, That supposing such an Execution in *Edinburgh Grass-Market*, the Scotch Judges might be ordered to Answer the same Questions by the Scotch Laws, and to sign their Opinions.

Which was likewise agreed to, and ordered accordingly.

The three Judges before-mentioned, being arrived from *Scotland*, according to Order, there arose a Question in the House of Peers, whether they ought to be examined at the Bar, at the Table, or upon the Wool-Sacks; which Question was debated for some Time on Friday, April 29; but, the Earl of I—ra having proposed, that the House should resolve itself into a Committee, to search Precedents in Relation to that Question, the same was agreed to, and 'twas Resolved, That the House would, on the Monday following,

resolve itself into the said Committee; and, accordingly, on that Day, the House being Resolved into the said Committee, the Question was again fully debated, in which Debate the Arguments for examining them at the Table, or upon the Wool-Sacks, were to the Effect, as follow, viz.

A My Lords, as I was not one of those Lords who desired the Attendance of any Judge or Judges from *Scotland*, I cannot certainly tell what was the true Meaning of their being ordered to attend; but as no Enquiry has been made into any Part of their Conduct, as no Resolution of the Committee seemed to be directed against either of them, I cannot think they were called up, or meant to be called up, as Persons guilty of any Crime or Misdemeanor; and as they had nothing to do with any Thing that happened when *Porteous* committed that Crime for which he was condemned to die, nor with any Thing that happened at the Time that unfortunate Man was murdered, I cannot think they were called up as Witnesses in any Part of that Affair; therefore I must suppose the only Reason for desiring their Attendance proceeded from the authentick Copy of *Porteous's* Trial now upon your Table. I suppose, from that Trial some Doubts and Difficulties had occurred to your Lordships with regard to the Laws of *Scotland*, and the judicial Proceedings of the supreme Court of Justiciary in that Country; and that therefore you desired the Attendance of those three Judges, in order to resolve those Doubts, and remove those Difficulties.

C If this be the Case, my Lords, I must think you can ask those Judges no Questions, nor can they answer any Questions, till they are brought into the House in a regular Manner, and placed according to their Rank upon the Wool-Sacks. I am indeed surprized that no Regulation for this Purpose was made by the Articles of Union, and I am as much surprized to find we have continued for so many Years without making such a Regulation; for as the Laws of *Scotland* are very different from those of *England*; there is as great a Necessity for this House's being always provided with the Attendance of some at least of the Scotch Judges, as there is for our having some of the English Judges always among us. In this House, Laws are to be passed relating to *Scotland* as well as *England*; in this House, Appeals in all Causes from *Scotland* as well as *England* are to be ultimately and finally determined; in this House, a Peer of *Scotland* may come to be tried for a Crime committed in *Scotland*, and for which he is to be tried according to the Laws of *Scotland*; nay in this House, we may have Occasion to pass Laws for regulating the Courts of Justice in *Scotland*; and how we can justly and conscientiously answer either

either of these Purposes, without having some of the *Scotch* Judges amongst us, is what I can no way comprehend. 'Tis true, we have at present, we have had ever since the Union, some of the *sixteen* Representatives of the Peerage of *Scotland*, who are, or have been great Masters of the Laws of their own Country, as well as of the Laws of many other Countries, but this is a good Fortune we are far from being sure of. We may have *sixteen* Peers sent up from *Scotland*, neither of whom may know more of the Laws of *Scotland* than most of us can pretend to know of the Laws of *England*; and in that Case, I should be glad to know, how it would be possible for us to proceed upon, or determine any Affair which required a thorough Knowledge, or at least a full Information, as to the Laws of that Country?

From this Consideration, my Lords, I really think it inconsistent with the Dignity of this House, and with the Honour and Character of our Proceedings, not to have the Attendance of some of the *Scotch* Judges, in order to give us proper Lights, and such as may be depended on, into the Laws and Customs of that Country; for surely no Man can form a good Opinion of the Proceedings of any Assembly, where the Members determine without either Knowledge or Information; and for this Reason I am surprized this Affair was not particularly thought of, and expressly regulated, at the Time the Union was concluded. If it had been thought of at that Time, I believe there is no doubt to be made, but that the Judges from *Scotland* appointed or ordered to attend this House, would have had Places assigned them upon the Wool-Sacks, next to the Judges of the same Rank in *England*; and tho' this Affair was at that Time neglected to be expressly and particularly regulated, yet it is an Affair which I think the People of *Scotland* may insist on from the general Terms of the Union; and it is an Affair which, in my Opinion, your Lordships cannot well refuse. By the Articles of Union it is expressly stipulated, that there shall be but one Parliament for the United Kingdom, and that the Subjects shall have a Communication of all Advantages, except where otherwise agreed in the Articles of Union. Is it not a great Advantage to the People of *England*, to have their learned Judges always present in this House, in order to give us that Information, which is necessary in all Cases where a Doubt arises about the established Laws and Customs of *England*? If this be an Advantage, as it certainly is, the People of *Scotland* have a good Title to claim the same Advantage, and to insist upon having some of their Judges likewise present in Parliament, for the same necessary Purpose. This is an Advantage, I say, they have a good Title; from these gene-

ral Words, to claim; because it is no way excepted by any Article of the Union; and as every Honour is an Advantage, they have a Right to claim that the same Honours, the same Respect, may be shewn by this House to the Judges of *Scotland*, as are shewn to the Judges of *England*, except that only of allowing a Preference to the latter, with respect to their respective Ranks or Degrees.

As this House has ever since the Union had the good Fortune to be supplied, from Time to Time, with noble Lords eminent for their Knowledge and Experience in the Laws of their Country, who happened to be of the *sixteen* chosen to represent the Peerage of *Scotland*, it has prevented our taking notice of this Defect in the Union; and it has prevented the People of *Scotland*'s laying claim to that Advantage, which they certainly, in my Opinion, have a Title to claim; it has even prevented their being sensible of any Want in this Respect: This, my Lords, contributes greatly to the Honour of some Lords we have had amongst us from that Country, and likewise to the Honour of some we have still the Happiness to have amongst us; for I must do so much Justice to some of the noble Lords of that Country we have now amongst us, as to say, that I believe we stand now as little in need of Information from the learned Judges of *Scotland*, as ever we did in any former Parliament; but this Advantage must of course cease in a Generation or two; for as no new Titles of Honour can be granted in *Scotland*, we can expect few or no Lawyers from that Country in the very next Age. I believe your Lordships are all sensible, we would often be at a great Loss, even with respect to the Laws of *England*, if we had no learned Judges to have recourse to, nor any Peers who had been raised to the Honour of Peerage, on account of their profound Skill and Experience in the Laws of their Country; and from thence your Lordships must see how necessary it will probably be for this House, in future Times, to have always some of the learned Judges of *Scotland* attending. This is the first Time any of them have ever been called to attend, it is the first Time it has ever been thought necessary to ask them any Questions; and if your Lordships oblige them now to attend, if you think proper to ask them any Questions, I hope you will shew them the same Honours, the same Respect, you would do to the Judges of any of the Courts of *Westminster-Hall*, if they should be ordered to attend for the like Purpose.

To put this Matter in a clear Light, give me Leave, my Lords, to suppose a Writ of Error brought into this House from any of the Courts in *Westminster-Hall*, from the Court of *King's Bench*, for Example; suppose upon reading the Cases, various Doubts and Scruples should occur to some of your

Lordships, with regard to the Laws relating to that particular Case, and with regard to the Proceedings below, for the clearing up of which, you should desire to ask the Judges some Questions, and for that Purpose should order them to attend at the Hearing; surely, you would not call them to the Bar, you would desire them to attend only in their Places upon the Wool-Sacks. Again, suppose this very Affair of *Porteous* had happened at *Newcastle* instead of *Edinburgh*; suppose he had been tried and condemned by the Judges upon the Assizes there; and, suppose you should order the Judges, by whom he was condemned, to attend, in order to answer some Questions, and to explain some Doubts, relating to his Trial and Condemnation; Would, your Lordships order them to attend at the Bar? No, my Lords; you could not; you, at least, would not desire their Attendance any where, but in their usual Places upon the Wool-Sacks. Therefore, from a Parity of Reason; if, your Lordships desire the Judges of the supreme Court of *Jusiciary* in *Scotland*, which is the same with the Court of *King's-Bench* in *England*; I say, if you desire those Judges to attend, if you desire to ask them any Questions about the Laws and Customs of *Scotland*, you ought first, in my Opinion, to take the proper Method, for giving them the Places due to them upon the Wool-Sacks; in order, that they may from thence answer such Questions, as you have a Mind to put to them; for, if they should answer Questions from any other Place, I am afraid, the greatest Part of their Countrymen will be apt to say, they have done what I shall not chuse to express.

But now, my Lords, suppose the Judges you have called up, are not to have any Questions put to them as Judges, but that they are to be examined as Witnesses, in order to see if they can give you any Light into the Affair now depending before you; yet as Judges of one of the supreme Courts of *Scotland*, and, consequently, as having a Right to be within the House, they ought to be examined at your Table, which is the Place, I believe, where the Judges of *England* would be examined, if they were to give Evidence in any Affair before you; for, it appears upon your Journals, that in the Year 1689, two Gentlemen had the Honour of being examined at your Table, tho' they were not then Judges, but, only because they had been Judges, and, as such, had had Places within the House. For this Reason, the Gentlemen who are attending by your Order, if they are to be examined as Witnesses, ought, I think, to be examined at the Table; it is what, in my Opinion, they have a Right to insist on, by the Articles of the Union between the two Nations, which I hope your Lordships will never break

through, in the most trifling Circumstance, without the unanimous Consent of both.

I hope, my Lords, no Inroad will ever be made in this House upon the Right of any private Man; I hope the meanest Subject will always be able to sue with Success in this House, for any Right or Privilege he can shew a just Claim to; but, the Right now in dispute before your Lordships, is not the Right of a private Man, nor is it a Right of a private Nature; it is the Right of a whole People, it is the Right of a Nation once free and independent, and, it is a Right stipulated by one of the most publick and most solemn Contracts that was ever made; a Contract which, on our Parts, we are obliged to observe and fulfil with the greatest Nicety, because the People of *Scotland* trusted entirely to our Honour for a faithful Performance; their submitting to be governed by one and the same Parliament, in which they knew we would always have a great Majority, was really in Effect submitting every Thing to our Honour; and I hope, they shall never have the least Occasion to repent of the Confidence they have reposed in us. For this Reason, in all Cases, where the Rights or the Privileges of the People of *Scotland*, by Virtue of the Articles of Union, come to be questioned, I shall always have a strong Bias in their Favour, especially when the Matter in question relates to a Piece of mere Ceremony. But in the present Case, I must think, there can be properly no Question; for, whether the Judges of *Scotland* ought to be in this House as Assistants, to give their Opinions upon such Matters of Law as may arise in the Course of our Proceedings, in the same Manner as the Judges of *England* do, is a Question, I think, determined not only by the Articles of Union, but, by the very Nature of the Thing itself; because, while *Scotland* continues to be governed by Laws different from *England*, it will be impossible for us to do our Duty without such Assistance.

My Lords, as nothing contributed more than the Union between the two Kingdoms, towards securing the Protestant Succession in the present Illustrious Family, so there is nothing can contribute more to the Preservation of that Succession, than the rendering that Union, every Day more firm and unalterable; which can no Way be done more effectually, than by cementing the People by an Union in Hearts and Affections, as well as an Union established by Law. While we have such a Majority in both Houses of Parliament, the People of *Scotland* will always find it impossible to break through or dissolve the legal Union that subsists between us; but, if we should ever make use of that Majority, which I hope we never shall, to break through or inroad upon those Articles, which have been

been stipulated between us; the legal Union will be of little Force, it will only serve to make them desperate, and to run the Risk even of their own Perdition, in order to rid themselves of the Yoke they groan under. They will be apt to ascribe to the present Royal Family all the Ills they feel, or imagine they feel; and, if they should unanimously join in a contrary Interest, we know they would be supported by a numerous Party in this Part of the Island, as well as by a powerful Party beyond Seas; for which Reason we ought to take all possible Care not to give them any just Ground of Complaint; we ought, even, to avoid a Measure which may be made use of by the Enemies of the Government, for sowing Discontent and Dissaffection in that Part of the Island. The Minds of the People in that Country are at present in great Agitation; the bringing up of so many Gentlemen, on Account of a Murder, committed by the very Dregs of the People, must give them a good deal of Concern; and, we may suppose that every Man's Attention is fixed upon the Behaviour of this House towards their Judges: If we treat them with any seeming Disrespect, if we treat them in any Manner different from that, in which the Judges of *England* would be treated upon a like Occasion, I am afraid the People in general will look on it as an Indignity offered to the whole Nation, and, as a Violation of the Articles of Union; therefore, I hope your Lordships will either not examine them at all, or examine them in a Manner to which no Exception can be taken.

As I am not of that Country, I have spoke with the more Freedom in this Debate, because I think I cannot be suspected of Prejudice or Partiality. If I have any, I confess it is upon that Side, on which I think my own Honour and the Honour of my Country most deeply concerned, which I take to be in a most exact Observance, not only of the Words, but of the Spirit and Intention of the Articles of Union. We contracted together as Nations quite independent of one another, and by the whole Tenor of the Contract it appears, that the Subjects of both Kingdoms are intitled to equal Honours, Privileges, and Advantages. We have no Pre-eminence to any Pre-eminence, but only that those of any Rank in *England* shall have the Precedence of those of the same Rank in *Scotland*. This they have always since the Union allowed us, and I hope we shall never dispute conferring upon any Gentleman of Rank in *Scotland*, those Marks of Honour or Respect, which are bestowed upon Gentlemen of the same Rank in *England*. I shall not pretend to prescribe to your Lordships, what Method you are to take for conferring those Marks of Honour or Respect; as the Judges

of *England* sit here by Virtue of the King's Writ, I should think the most regular Way would be, to address his Majesty to order such Writs to be issued as may be thought proper, for enabling the three *Scotch* Judges now attending by your Lordships Order, to come and take their Places upon the Wool-Sacks; but I shall make no Motion for this Purpose, till I hear the Sentiments of other Lords upon the same Subject.

To this it was answered in Substance thus, viz.

My Lords, I am sure I am as ignorant as the noble Lord who spoke last, how the three *Scotch* Judges came to be sent for, or what were the Reasons for sending for them, Whether their Attendance was desired, in order that they might be examined as Witnesses in the Affair now depending before us, or in order that they might answer Questions and give their Opinions as Judges learned in the Laws of *Scotland*, is what I know nothing of; for I was no ways privy to the Design of making such a Motion, nor did I know any Thing of it till I heard it made; and I gave my Consent to it, only because I supposed the noble D—ke who made it, had good Reasons for sending for them, which would appear at the proper Time from the Questions he should ask, and the Cases he should put to them. I very well remember, that a few Days before the Motion was made, for ordering these three Judges to attend, a Motion was made by a noble Lord near me, for ordering one of these Judges, I mean the *Lord Justice Clerk*, to attend, which Motion was upon a Division disagreed to; but if I did not mistake the noble Lord who made that Motion, he did not mean to send for that Gentleman as a Judge, but as an Officer of State, and as one very much entrusted, by Virtue of his Office, with the civil Government of that Country; he did not mean to send for that Gentleman to answer any Questions about the Laws of *Scotland*, but to answer for his own Conduct about the Time *Porteous* was murdered; and as I thought the Conduct of that Gentleman was not such as it ought to have been upon that Occasion, I joined with the noble Lord in his Motion; but I then had, as I generally have, the Misfortune to be of the wrong Side of the Question.

Notwithstanding the ill Fate of this Motion at first, yet, my Lords, it might probably have been renewed in the Course of our Enquiry; but in a few Days after, a noble D—ke stood up and moved that this very *Lord Justice Clerk*, together with the two Senior Judges of the same Court, might be ordered to attend; which was accordingly agreed to, and this made the Renewal of the first Motion unnecessary. This different Method of sending for him appeared to me at first as a Matter of no great Moment; but now

I must say, I wish the first Motion had been agreed to, because in that Case, I believe we should have had no such second Motion, I believe none other of the *Scotch* Judges would have been sent for; and if none other of them had been sent for, we should at this Time at least have had no such Question as the present before us; for tho' I am in my own Opinion very clear in the Question now before us, yet I wish with all my Heart no such Question had upon this Occasion occurred.

Whether the Judges of *Scotland*, my Lords, have a Right by the Articles of Union, to insist upon having the King's Writ for being present in this House, and for having Places among the other Judges upon the Wool-Sacks; or whether it be necessary for us to have their Attendance, are Questions, which, I think, are not properly now before us; and therefore I shall not take up your Lordships Time with inquiring into them; but I am sure no Judge of *Scotland* was ever yet admitted to be present, nor have any of them now a Right to come within this House; for no Man can come within our Bar but by Patent, by Writ, or by Custom. The Judges of *England* have their Places upon the Wool-Sacks by the King's Writ, and till the Judges of *Scotland* get Writs of the same Nature, they have no Right to come within our Bar, nor have we, I think, a Power to bring them within the Bar, because it would, in my Opinion, be an Incroachment upon the King's Prerogative. Nay, I must go farther, I do not think the King himself, even with the Consent of this House, can issue out any such Writ; for even the King's Power of issuing such Writs is limited by Custom. His Majesty may by Custom, and by his Prerogative, create as many Dukes, Marquisses, Earls, Viscounts, or Barons as he pleases; but I do not think he can grant, or rather create, a new Title of Honour in *Great Britain* without an Act of Parliament. So he may by Writ call the Judges of *England* to be Assistants to this House: He might likewise according to the antient Custom issue Writs for his Serjeants at Law, his Counsel learned in the Law, and some other Officers, to attend as Assistants; but I do not think that he can issue Writs for the Attendance of any Judges, Serjeants, Counsellors, or Officers, not warranted by antient Custom: For the Issuing of any Writ not warranted by Custom, there must be an Act of Parliament; because it is a Matter which concerns the whole Nation, it concerns the other House as well as this; and any such Attempt would certainly meet with Opposition from the other House. Therefore, as the Issuing of any Writ for summoning the Judges of *Scotland* to attend in Parliament was not particularly and expressly established by the Articles of Union, it cannot now be done but

by an Act agreed to by all the Branches of our Legislature; and as it cannot be done without such an Act, it would be very improper for us to present to his Majesty any such Address as has been proposed.

If the Judges of *Scotland* had ever had any such Writs as the Judges of *England* have, for summoning them to Parliament, if they had ever had the Honour of having a Seat within the Bar, they would then have had a Right to claim giving their Opinions upon the Wool-Sacks, or to be examined at the Table; but, my Lords, as they have never yet had any such Honour, they have certainly no Right to claim any such Privilege; for it is upon the Honour of having a Seat in the House, and upon that only, the Privilege of being examined at the Table depends. To the highest Officer in the Kingdom, if he has no Seat in the House, we cannot grant that Privilege, without sacrificing the Honour and Dignity of the House, and, in my Opinion, incroaching upon the Prerogative of the Crown; and if we should once begin to make any such Sacrifice, or any such Incroachment, God only knows how far we may be induced or obliged to go. If we once break through this antient Rule, if we once begin to grant the Privilege of being examined at the Table, to any one Officer who has not the Honour of having a Seat in the House, many other Officers will claim the same Privilege; and I make no doubt but the other House would immediately set up such a Claim, with respect to every one of its own Members. The Judges of *Scotland* now attending we may compel to appear before us in such Manner as we think proper; but let us consider, my Lords, we cannot compel the Members of the other House to come to be examined at all before us; and therefore if we give that House a Pretence for setting up and insisting upon any new Privilege, we must comply with it, or we shall be deprived of every Evidence any Member of that House may hereafter be able to give, with respect to any Affair depending before us; for as no Member of the other House is obliged to come to be examined before us, as he cannot come without the Leave of the House to which he belongs, we may depend on it, that House will never grant Leave to any of their Members to be examined at our Bar, after we have once furnished them with a Pretence for being examined at the Table.

As that, my Lords, of having a Seat in the House is the only Title, upon which any Person can claim being examined at the Table, so this is a Rule which we have hitherto most strictly and most uniformly observed; in so much that the highest Officers in the Kingdom have been examined at our Bar, without any regard to the Office they bore, and without shewing them the least Respect

on that Account. It appears upon our Journals that the Commissioners of the Great Seal were examined at our Bar, and without any more Ceremony or Respect, than would have been shewn to the most private Gentleman in the Kingdom. It likewise appears upon our Journals, that an Hon. Gentleman was examined at our Bar, who was at that very Time first Commissioner to the Treasury, Chancellor of the Exchequer, and not only a Privy Counsellor, but, I believe, a Cabinet Counsellor to the King then upon the Throne; and tho' that Gentleman still possesses the same Employments, tho' he enjoys as many Honours, and is as much respected by this House, as any Gentleman ever was in *England*, yet, if he were again to be examined as a Witness in any Affair before us, I hope he would, I think he ought to be examined in the same Manner.

This shews that no Post a Man possesses, no Honour he can have, except that of having had a Seat in the House, can entitle him to the Privilege of being examined at the Table; and the Example of the two Gentlemen mentioned, who were admitted to read some Records at our Table, instead of reading them at the Bar, in the Convention of Estates in 1688, is no Exception to this Rule; for those two Gentlemen, my Lords, had both been Judges, they had both had Seats in the House, and the Convention were certainly of Opinion, they had been illegally turned out, therefore they still look'd on them as having a Right to a Seat in the House; and having called, or rather desired the Favour of them to come and assist the House in reading some old Records, they could do no less than allow them that Privilege which they were in Equity, tho' not in Law, entitled to. But suppose these two Gentlemen had had no Pretence to have been admitted within the House, that Convention was no Parliament, nor was that Assembly of Lords properly a House of Lords: They were not considered as such by the Nation, because their Acts or Orders were confirmed by an express Law passed in the next ensuing Parliament, for which there would have been no Occasion, if the Parliament or Nation had look'd upon that Convention as a legal and regular Parliament; therefore nothing that was done in that Convention can be a Precedent for us, and much less can it be a Foundation for our breaking thro' a Rule that has been established, and constantly observed ever since we have any Records of Parliament.

I have as great a Regard, my Lords, as any Man can have for the Articles of Union, I have as great a Regard for the People of *Scotland*, and would be as loth as any Man to give them a just Cause of Complaint; but, I have an equal Regard for the Honour and Dignity of this House; and, I am sure, my shew-

ing a due Regard to the House of Peers, of which I have the Honour to be a Member, can never give Offence to any Man of common Understanding in *Scotland*; therefore, I am certain, our shewing a strict Regard to our own Privileges on this Occasion, can never disoblige any great Number of Persons in that Country, where good Sense abounds as much among the People, as it does, I believe, in any Country in the World. Nay, I am convinced, a Sacrifice of the Honour and Dignity of this House, on any Account whatsoever, would generally disoblige the People of that Country, as well as the People of this; for, we are now intrusted with the Honour and Privileges of the Peerage of both Nations; and, to prostitute the Dignity of this House in any Respect, or for any Consideration, would be a Prostitution of the Honour and Privileges of the Peerage of *Scotland*, as well as *England*.

What Benefit or Advantage might accrue to the People of *Scotland*, from having their Judges present in this House, what Right the People may have from the Intention and Spirit of the Articles of Union, to claim that Benefit, and what Necessity or Occasion this House may hereafter have for the Attendance of some of those Judges, are Questions, which I am sure we have not Time to inquire into in this Session, and much less can we inquire into, or regulate this Affair, before it will be necessary for us to examine the *Scotch* Judges, who are now attending by our Order. I should, with all my Heart, agree to our inquiring into that Affair, if I thought it possible for us to go through with it before the End of the Session; I should readily join in granting the People of *Scotland*, all the Right they could claim, nay, all the Favour they could expect, upon the Issue of such an Inquiry; but, I believe, it will be granted that every one of these Questions is a little doubtful, and of great Moment; therefore, it will be necessary to inquire into them with great Calmness and Exactness, and, not to resolve either of them till after the most mature Deliberation. It would be necessary to inquire into the antient Customs and Usages of the Parliaments of *Scotland*, in order to see, whether the Judges of *Scotland* had any Seats as such, in their Parliaments; several other Matters would be necessary to be enquired into; and, we should certainly meet with a good deal of Difficulty in allotting them their proper Places upon the Wool-Sacks, in determining what Number of them should always attend, and, in regulating how they should take their Turns in attending; for, I hope, you would not have them all to attend, so as to make every Session of Parliament an absolute Cessation of all Manner of Justice in *Scotland*. Many other difficult Questions would certainly occur in the Course

of that Affair; and, it would be necessary to manage every one of them with great Tenderness, in order to prevent any possible Breach between the two Houses of Parliament, as well as to prevent raising any fresh Animosity between the two Nations. From all which, I must conclude it impossible for us to pass any Bill in this Session, for bringing any Judges from *Scotland* into this House; and, as there is no Method of doing it, but by an Act of Parliament, therefore, it cannot be proper for us to enter upon any such Affair at present.

Thus, your Lordships must, I think, all see, that it is impossible for us to grant those Honours, or to shew that Respect to the *three Scotch Judges* now attending, which some Lords seem to desire, and, which I should willingly agree to, if we could possibly do it without sacrificing the Honour and Dignity of this House, and exposing both ourselves and our Posterity to numberless Inconveniences. I am sorry, any Question of this Nature should have happened: I am now more sorry, my Lords, than I was at first, that the Motion for bringing up the *Lord Justice Clerk*, was not agreed to; because, I believe, it would have prevented any such Question as the present; but, now the Question has occurred, I hope, your Lordships will shew a due Regard to the Honour and Dignity of your own House, by resolving to examine these Judges at the Bar, in the same Manner as you have examined the greatest Officers in *England*, who happened not to have the Honour of having a Seat amongst us. As such a Resolution can offend no Man of common Sense, it can raise no general Discontent in *Scotland*, nor occasion any Dissatisfaction to the Illustrious Family, we have now the Happiness to have upon the Throne. If any unthinking People in *Scotland* should be misled by the Enemies to our happy Establishment, it will be easy for the noble Lords of that Country we have now amongst us to undeceive them, and to convince them that no Indignity or Affront was intended by any such Resolution. The Abilities of all these noble Lords are apparent, I am sure their Inclination will not be wanting, and I do not question but their Interest and Authority among the People of their Country are equal to their Abilities.

Therefore, my Lords, as no Danger is to be apprehended, from our examining the Judges now attending, in the usual Manner in which all Persons, who have not a Seat in this House, are examined; and, as great Danger is to be apprehended, and many Inconveniences must necessarily ensue, from examining them in any different Manner, I shall conclude with this Motion, That the *Lord Justice Clerk*, and the two Senior Judges of the Court of *Jusiciary* in *Scotland*, now attending according to Order, be examined at the Bar of this House.

To this it was replied in Substance as follows, viz.

My Lords, I am sorry, not on Account of the present Question's having now happened, nor on Account of its having happened on this Occasion, but, on Account of its being made a Question at all. I am sorry, the Right the *Scotch Nation* has to have their Judges in this House should have ever been brought into dispute; for, I am sure, such a Contest can no Way contribute to the Welfare of the United Kingdom, or to the Establishment of that Harmony, which ought to be kept up between the People of those two Kingdoms, which were long separate and independent, but, are now, for the Benefit of both, happily united into one. Unreasonable Feuds and Animosities are but too apt to arise between any two People, who have been long accustomed to live under distinct Governments, and are but just united under one and the same. The Flames of Dissension may cease or disappear, but it is a long Time before the Fire can be entirely extinguished; and, therefore, those who have the Honour of being entrusted with the Government of any such two People, ought to be extremely cautious of engaging in any Measure, or, of bringing any Question upon the Carpet, which may blow up those Coals that have been but lately covered with the Ashes of Wisdom and Good-Policy, and cannot, therefore, be supposed to be absolutely extinguished. If the bringing up of all, or any of the Judges of *Scotland*, as Assistants to this House, could possibly be of any Prejudice to the People of *England*; or, if it could be look'd on as any Way dishonourable to, or beneath the Dignity of this House, I should not at all have been surprized to have heard it contested; but, when it can be no Way prejudicial to the People of *England*, nor any Way dishonourable to this House; when it may so greatly contribute to the Advantage of the People of *Scotland*; and, when it appears in itself so necessary, for enabling us to determine many Questions that may come before us; I confess, I am not only surprized, but I am sorry to find it so much as contested.

I remember, my Lords, the first Motion in this House, relating to any of the *Scotch Judges*, was for bringing up the *Lord Justice Clerk* only. I was against that Motion, for the very Reason, it seems, which made other Lords for it. I was against it, because it seemed to be a Motion for bringing him up as a Criminal, and not as a Judge; and, I was against his being brought up as a Criminal, because there was nothing then appeared before us, which could give the least Foundation for such an Accusation. I agreed with the Motion for bringing him and the two Senior Judges of the same Court up;

because, I knew your Lordships had a Power of requiring the Attendance of any of the Judges of *Scotland*, as well as you may require the Attendance of any of the Judges of *England*; and, I have always observed, that no such Order has ever been refused, when any Lord of this House pleased to ask for it. These, my Lords, were my Reasons, and I still think they were good Reasons, for agreeing to the second Motion, and for disagreeing to the first. But, suppose the first had been agreed to by the House, it could not have prevented the second; because, any Lord of this House had a Power to desire that any of the Judges of *Scotland* might be ordered to attend, in order to explain some Doubts that had occurred to him relating to the Law of *Scotland*; and, surely, no Lord who wanted to have such Doubts explained, would have trusted the Explanation of them to a Judge, who had been brought up as a Criminal. Again, suppose the *Lord Justice Clerk* had been brought up by himself alone, suppose he had been brought up, not as a Judge, but as a Criminal, the same Question would have occurred; because, as he is a *Scotch* Judge, and one of the chief of them too, he must have been considered as such, till some Resolution, at least, of this House had passed against him; therefore, in his first Examination he might have insisted, he ought to have insisted, on his being examined at your Table; for, I am sure, your Lordships would not have made a new Precedent for condemning a Man without Hearing him. Our having agreed to the first Motion relating to any of the *Scotch* Judges, could not, therefore, have prevented the present Question; there was no Way of preventing it, but by a previous, and what I must call a prudent Care, to give the Judges of *Scotland* what, I think, of right belongs to them, I mean, their Places upon the Wool-Sacks, before you resolved to desire their Attendance, either as Judges, as Witnesses, or as Criminals. Their Conduct as Judges has been already approved, or, at least, not condemned, by your Lordships; and, if any of your Lordships are of Opinion the *Lord Justice Clerk* has misbehaved in any other Part of his Duty, you have him now attending; you may revive the Committee, and may proceed to enquire into his Conduct; but, before you begin to proceed against him as an Officer of State, I hope you will grant him what, I think, of Right belongs to him as a Judge of *Scotland*.

The Right, my Lords, which the Judges of *Scotland* have by the Articles of Union, to insist upon having the King's Writ for being present in this House, and for having Places among the other Judges upon the Wool-Sacks, or rather the Right, which the People of *Scotland* may claim, of having some of their Judges always attending as Assistants

to this House, is the first and chief Question now before us; because, without first determining this, you cannot determine the other, as to the Place in which they are to be examined; nay the Determination of the second, determine it which Way you will, must be a full and a final Determination of the first.

A If the Judges or People of *Scotland* have any such Right by the Articles of Union, they have had it ever since those Articles were agreed to; and if they have had such a Right ever since that Time, the Judges now attending have had an undoubted Right to Seats in this House for many Years, tho' they have never hitherto had Occasion to take Possession of them. It has never been established as a Rule, not to admit any Person to be examined within the Bar, but such as were actually in Possession of a Seat in the House. On the contrary, any Sort of Right to a Seat in the House, has always been looked on as a Right that intitles a Man to be examined within the Bar.

C The famous Case of the *Lord Forrester*, who was a Lord of *Scotland*, but not one of the Sixteen, is a full Proof of this Rule; and the Case of the two Gentlemen who were called to read some Records to this House in the Year 1688, and who were for that Purpose admitted to your Table, is a Proof that an equitable Right to a Seat in the House is as good as a legal. Those two Gentlemen had, 'tis true, been Judges, and the Convention as well as most of the Nation probably, and, I think, rightly, were of Opinion, they had been unjustly turned out from being Judges; but suppose they were unjustly turned out, 'tis certain they had then no legal Title to a Seat, nor were they in Possession of any Seat in the House; the only Reason for admitting them to the Table, was on Account of the equitable Title they had to Seats upon the Wool-Sacks.

E That Convention indeed was not at first a Parliament, but I am sure none of your Lordships will question their Power, nor will this House, I hope, ever refuse to admit any Proceeding of theirs as a good Precedent, in any Case of the same Nature. It was not for any Deficiency of Power that their Acts and Proceedings were confirmed by the next Parliament; that Act of Confirmation was passed only to satisfy the unreasonable Scruples of some Men; and upon this Maxim, That Abundance of Law never breaks the Law; for surely no Man imagines that any of the Acts or Resolutions of the first Parliament after the Revolution, received any new or additional Force from this Act of Confirmation, which was passed in the second. And I must observe, that the Precedent now under our Consideration, was not a Precedent made by the Convention, while it continued a Convention, but after it was declared to be a Parliament; so that it is a Precedent which deserves

serves as much Regard as any Precedent since that Time.

Now, my Lords, as your resolving to examine the *Scotch* Judges at your Table, if you do come to any such Resolution, will be founded upon the Right they have to Seats within your House, therefore their being examined in such a Manner can never afford a Pretence for any Man in the Kingdom to be examined at your Table, if he has no Manner of Right to a Seat within your House: Consequently, there is no Ground for saying that your coming to any such Resolution, or your examining them in any such Manner, can subject you or your Posterity to any one Inconvenience. As for the Commissioners of the Great Seal, the first Commissioner of the Treasury, the Chancellor of the Exchequer, or any Privy or Cabinet Counsellor, I am surprized to hear it said that your Lordships having examined all or either of them at your Bar, can be an Argument for examining the Judges of *Scotland* in the same Manner. Is there any one of these Officers that, as such, has the least Pretence to a Seat in this House? therefore, according to the Rule that has been established, and which seems to be agreed on by every one of your Lordships, they had no Pretence to be examined within the Bar; but from that very Rule, the Judges of *Scotland* have a Pretence to be examined within the Bar, because they claim from the Articles of Union a Right to sit in the House as Assistants, in the same Manner as the Judges of *England* do; and if they have but an equitable Right, it will certainly be not only a Piece of Injustice, but an Indignity done to them, to examine them at your Bar; for which Reason their Claim of Right ought to be first determin'd, because upon that, and upon that only, the other Question must necessarily depend.

That the Judges of *Scotland* ought to be summoned as Assistants to this House, that the People of *Scotland* have a Right to have some of their Judges present in this House, appears, my Lords, not only from the two Articles that have been mentioned, by which it is provided that the United Kingdom shall be represented by one Parliament; and that the Subjects shall have a Communication of all Advantages not excepted in the Articles; but likewise from the 18th and 19th Articles of the Union, by which it is expressly provided, that all Matters of private Right shall be determined by the Laws of *Scotland*, and before the proper Courts there; so that, tho' there lies an Appeal to this House, yet in all such Appeals we are, by the Articles of Union, obliged to determine according to the Laws of *Scotland*; and how is it possible for us to determine according to those Laws, if we have no Lord nor any Assistant in the House, who can inform us what those Laws are, and ex-

plain those Passages which may appear a little dark or doubtful? From these Articles, and indeed from the whole Tenor of the Treaty, this Right appears so manifest, that I am surprized to hear any Doubts made about it; and I am as much surprized to hear so many Difficulties started about the Manner of making it effectual.

A I shall agree, my Lords, that no Man can come into this House but by his Majesty's Writ of Summons, and in issuing of such Writs it may be true that the Power of the Crown is limited by Custom. But with respect to that which depends upon the Articles of Union, the Power of the Crown can neither be limited nor directed by the Custom of *England*, or the Custom of *Scotland*; it can be directed by nothing but the Articles themselves, and as those Articles made it necessary to have the Judges of *Scotland* called to the Assistance of this House, as well as the Judges of *England*, surely the King got by those Articles a Power to issue Writs for calling them accordingly. Suppose then a Writ of Summons should be directed to every one of them, it could be attended with no Inconvenience; it would not be necessary for them all to come up here, and to attend the whole Time of the Session; such as pleased only would come, unless your Lordships should upon any great Occasion, such as the present, make an express Order for the Attendance of all or some of them: The Issuing of such Writs could not therefore occasion any Surcease of Justice in *Scotland*, or impede or interrupt the Proceedings at Law there, no more than the Issuing of such Writs to the Judges of *England* interrupts or prevents the Course of Proceedings at the Assizes, which are held in all Parts of *England* as regularly when the Parliament is sitting, as when it is not.

E For my Part, my Lords, I cannot think there is the least Occasion for any new Act of Parliament in this Case. The Act of Parliament which ratifies and confirms the Articles of Union has certainly already given to his Majesty a full Power to do that, without which some of those Articles cannot possibly be complied with or fulfilled; and tho' his Majesty has not yet executed that Power, tho' there has never been before now a Necessity for his executing that Power, yet he may certainly execute it whenever he thinks proper, or as soon as this House shall by an Address desire him to do so. But suppose a new Act of Parliament were really necessary, that Act of Parliament can depend upon none of the antient Customs of the Parliaments either of *Scotland* or *England*, nor can any Part of it be founded upon any of those antient Customs or Usages; the Act to be passed can be founded upon nothing but the Articles of Union, and the Necessity there appears to be

be for having the Judges of *Scotland* called as Assistants to this House, in order that we may be enabled to do Justice to the People of *Scotland* according to their own Laws, which is what we are bound to do by the Articles of Union. The Method of holding Parliaments in *Scotland* was quite different from the Method now established for holding the Parliaments of *Great Britain*: There the Lords and Commons sat together in one House, and as the Judges were capable of being chosen by any County, City, or Borough, in that Kingdom, most of them were generally Members of Parliament, so that there was no Necessity or Occasion for calling them by Writ as Assistants. With respect therefore to any new Act of Parliament to be passed on this Occasion, we can take no Direction from any Custom or Usage of the Parliaments of *Scotland*, and consequently can have no Occasion to enquire into any of them. We can have regard to nothing but the Articles of Union, and the Rights and Privileges, or Obligations, which naturally and necessarily arise from them: This can require no tedious Enquiry, nor can any Difficulty arise in the drawing up or passing such an Act, but what may be soon got over, if no Partiality or Animosity be allowed to enter into the Affair, which I am sure we have not the least Ground to fear in this House; and as the other House is very little concerned in the Question, it is to be hoped they would agree to what we should think proper, without any great Difficulty. For this Reason I must think, that, if an Act of Parliament be necessary for empowering his Majesty to summon the Judges of *Scotland* as Assistants to this House, such an Act may be passed, the Writs may be issued, and the Judges may have taken their Places upon the Wool-Sacks, not only before this Session is at an End, but before it may become absolutely necessary for us to examine them; and then the Examining of them can bring us into no Dilemma, nor into the Danger of committing what may be thought a Breach of the Articles of Union, or of agreeing to that which may be thought a Sacrificing the Honour and Dignity of the Peerage of *Great Britain*.

But, my Lords, if your Lordships be of Opinion, that all or some of the Judges of *Scotland* ought to be called as Assistants to this House, if you are of Opinion the People of *Scotland* have a Right to insist upon their Judges being called as Assistants to this House, can the supposed Difficulty you will meet with in enquiring into the Affair, or getting an Act of Parliament passed, be any Reason for your not attempting it? Suppose you should not be able to bring such an Affair to Perfection in this Session, yet your entering upon it, and making some Progress,

will certainly pave the Way, and make it easy to pass a proper Bill the next Session. Suppose this Right which the Judges of *Scotland*, in the Name of themselves and the whole People of *Scotland*, now lay claim to, were a great deal more doubtful than, I think, it is; yet it must be allowed to be a Matter of Right; and will your Lordships proceed to determine that Right, or to determine any collateral Question, by which the principal Question will at least receive a dangerous Blow, without hearing Parties either by themselves or their Counsel upon the Right they contend for? This is so contrary to your Lordships known Justice and Equity, and to your usual Method of Proceeding in Cases of the like Nature, that I cannot allow myself to imagine you will agree to it. If you think you have not Time to enquire into this Affair, or to hear Parties upon the Matter of Right contended for, some Expedient may be found for putting it off, or for avoiding any Thing that may look like a Decision of the Affair. What Questions the noble Lords may have to put to the Judges now attending, I do not know; what Lights any Lord can expect from them, I cannot comprehend; but if those Questions are not very material, if the Lights expected from them are not thought to be of great Importance, I wish the noble Lords would pass from the Order made for their Attendance, and give over all Thoughts of putting any Questions to them, or of calling them either to the Bar or the Table for that Purpose; for tho' we have made an Order for their Attendance, tho' they are come up here in Obedience to that Order, yet we may pass from, or delay calling them till the Session is expired; and I must observe that, if your Lordships should order them to the Bar, and it should then appear, you had no Matters of great Importance to interrogate them about, the whole People of *Scotland* will conclude, you called them to the Bar for no other Purpose but to put an Indignity upon them.

I am glad to hear every noble Lord that has spoke in this Debate profess such a Regard for the Articles of Union, and for the People of *Scotland*; I am convinced their Lordships have all spoke sincerely upon this Occasion: This I am convinced of, because I have the Happiness to be personally acquainted with their Lordships; but, my Lords, the People of *Scotland*, who hear nothing of what is said, but of what is done, will, I am afraid, conclude, that we have no Regard for them, and as little for the Articles of Union, if they should hear we have determined a Right, pretended to be founded upon those very Articles, without so much as hearing any of the Parties concerned, in Vindication of the Right they claim. They look upon themselves as intitled to all the

Advantages, Privileges, and Honours, not expressly excepted in the Articles of Union, which the People of *England* are intitled to; and it will be impossible to persuade them, no Injustice has been done them, nor any Indignity put upon them, when they hear, that their Judges were kept standing at your Lordships Bar, while the Judges of *England* were sitting within the House. This is a Distinction, my Lords, which it is impossible to palliate or excuse, and if you design to keep up that Harmony and Unanimity which ought to be kept up between the two Nations, so lately made one, I am sure you should avoid, as much as possible, all national Distinctions. If the People of *Scotland* should think themselves injured, they cannot, 'tis true, vindicate themselves as a Nation; they must put themselves upon a Footing as Rebels against a legal established Government, if they should attempt to oppose any Thing resolved on by the Parliament of *Great Britain*; but this is owing to the great Confidence they put, at the Time of the Union, in the Honour and Justice of the People of *England*; for they could not then suppose that the Number of Members they were to send to either House, could prevent that House's being guilty of any Partiality or Injustice towards them; and I hope your Lordships will always be extremely cautious of giving the People of *Scotland* the least Cause to repent of that Confidence they then put in the Honour and Justice of their Neighbours of *England*.

One of the chief Causes, my Lords, which produced the Union was, we all know, the Establishment of the Protestant Succession. The Settlement of the Crown upon the present Illustrious Family had been established by Act of Parliament in *England*, long before the Union, but the *Scotch* Parliament could never be induced to agree to it; on the contrary, they seemed to be taking Measures to prevent its being forced upon them. This made every wise Man in *England* as well as *Scotland* more fond of an Union than otherwise they would have been, and made them all labour more heartily and more cordially to bring it about. Accordingly, by the very second Article of the Union, the Succession was settled upon the present Illustrious Family, and by Virtue of that Settlement we have now the Happiness to see his present Majesty in Possession of the Crown of the United Kingdoms of *England* and *Scotland*. It is therefore the Business, it is the Duty of every Man who is a true Friend to the Illustrious Family now upon the Throne, to endeavour as much as he can to render the Union agreeable to the People of *Scotland*; because if they should ever begin to repent of having agreed to the Union, they will naturally begin at the same Time to repent of having agreed to the Succession; if they should ever begin to entertain a Desire of be-

ing rid of the one, they will of Course begin to entertain a Desire of getting rid of the other; and if this should ever come to be the Desire of the People of that Part of the Island in general, it may, in Case of a War, be of the most dangerous Consequence to the present Royal Family. For this Reason, I think, your Lordships should avoid every Thing that may look like doing an Injustice to the whole People of *Scotland*, or that may look like making an invidious Distinction between that People and the People of *England*; and as I think the making of any Difference between the Judges of *Scotland* and the Judges of *England*, or the shewing of any less Respect to the former than you usually do to the latter, will be look'd on by the whole People of *Scotland*, not only as an invidious Distinction between the two Nations, but as a real Indignity put upon them, therefore, I hope it will be avoided, if possible; which may very easily be done, if your Lordships have no Matters of very great Importance to interrogate these Judges about.

But suppose, my Lords, you have Questions of the utmost Importance to put to them, suppose you think it absolutely necessary to examine them in relation to this Affair of *Porteous*; and suppose you think it absolutely impossible for you now to take Time to enquire, whether they have any Right, by the Articles of Union, to be called as Assistants to this House, and as such to have Places upon the Wool-Sacks, according to their Ranks, next to the Judges of *England*; yet as this Claim of theirs is a Matter of Right, as it is a Matter of Right, in which the People of *Scotland* have a very deep Concern, I hope, your Lordships will not determine it without hearing Parties very fully upon it; and therefore, if you now come to a Resolution to examine them at your Bar, I hope you will add a saving Clause to that Resolution, saving and reserving to the Judges of *Scotland* all Manner of Right which they may have, or lay Claim to by the Articles of Union, for being called by his Majesty's Writ as Assistants to this House, and for being placed as such upon the Wool-Sacks, according to their Ranks, next to the Judges of *England*.

To conclude, my Lords, I wish this Affair had been expressly and particularly regulated by the Articles of Union, I wish a proper Clause had been added expressly empowering his Majesty to call the Judges of *Scotland* as Assistants to this House, and to place them upon the Wool-Sacks, according to their Ranks, next to the Judges of *England*: If it had been then thought of, I am convinced it would have been readily agreed to; considering the Circumstances the two Nations were then in, I am sure none of your Lordships can think, this Piece of Respect, which could

could not possibly be of any Disadvantage to the People of *England*, and which was so necessary for the People of *Scotland*, would have prevented an Union, which was so much for the Advantage of both Nations. But in Treaties of such a Nature, it is impossible to foresee, or to provide for all the Questions that may afterwards occur; the Spirit and Intention of the Treaty must be considered, in order to form from thence a Rule for deciding any Question that may afterwards arise, which does not appear to have been expressly provided for in the Treaty; and to me it appears evident that, by the Spirit and whole Tenor of the Treaty of Union, it was intended, that no Distinctions should afterwards be made between the People of the two Nations, or between any Rank of Men in the one and the same Rank of Men in the other, but such as were expressly regulated in the Treaty; or that any Advantages should be enjoyed by the People of the one Country, but what should be enjoyed by the People of the other, unless otherwise stipulated in the Treaty; and as it is a very great Advantage to the People of *England*, to have their Judges called as Assistants to this House, your Lordships must allow the People of *Scotland* are intitled to the same Advantage by the Articles of Union; you must allow that no Distinction ought to be made between the Judges of the supreme Courts in *Scotland*, and the Judges of the supreme Courts in *England*; therefore, I think, you cannot agree to the Resolution that has been proposed, I hope you will not agree to it, without the saving Clause I have mentioned.

This was the Substance of the Debate upon this important Occasion, and the Question being at last put upon the Motion for resolving as before-mentioned, to examine the *Scotch* Judges at the Bar, it was upon a Division carried in the Affirmative by 48 to 37. Then the House being resumed, the Lord D—r, who was in the Chair, reported the Resolution of the Committee, which, after some little Debate, was carried in the Affirmative, upon a Division as follows, *viz.*

Contents	Not Contents
In the House—47	In the House—36
Proxies—16	Proxies—15

63

51

After which the three *Scotch* Judges were called to the Bar, where they appeared in their Robes, and some few Questions were asked them; but as neither of the Questions seemed to be of great Importance, we do not think it necessary to give an Account of them, or of the Answers that were made to them.

The principal Speakers in this Debate for calling the *Scotch* Judges to the Bar, were, The E—l of A—, the E—l of A—d,

the E—l of C—d, the E—l of S—rd, the E—l of W—ca, the L—d Ch—r, the L—d D—r, and the L—d B—st; and the principal Speakers against it were the D—ke of A—le, the E—l of I—a, the D—ke of N—tle, the L—d H—y, the D—ke of A—l, the E—l of C—rd, and the E—l of F—r.

We shall now proceed to give a short History of the passing of that Law, which now stands upon Record, against the *Lord Provost* and City of *Edinburgh*; after which, we shall give the Substance of all the Debates, which happened in either House on the passing of that Bill.

The *Lord Provost* and City of *Edinburgh* having been admitted to be heard by their Counsel against the said Bill, upon its being read a second Time in the H—se of L—ds, that Hearing began on *Wednesday, May 4*, and continued all that Week: On *Saturday*, being the 9th, the Bill was committed for *Monday*, when it passed through the Committee; and on *Wednesday, May 13*, it was read a third Time and passed in that House, on a Division, 54 Contents, to 22 Not Contents.

On *Monday, May 16*, the said Bill, in the Form and with the Title as before-mentioned, was sent down to the H—se of C—s, where, after some Debate, it was read a first Time, and ordered to be read a second Time on the *Wednesday* Se'nnight after: Then 'twas resolved, That the Lords should be desired at a Conference, that the Grounds, upon which the said Bill proceeded in their House, might be communicated to the House of Commons; and 'twas ordered, That a Committee should be appointed to prepare Matter, to be offered to the Lords at a Conference for that Purpose; which Committee being accordingly appointed, Mr. *Attorney-General* reported next Day from the said Committee, That they had prepared Matter accordingly, which the Committee had directed him to report to the House; and having read the Report in his Place, and delivered it in at the Table, it was there again read, and agreed to by the House;

whereupon 'twas resolved, That a Conference should be desired with the Lords upon the subject Matter of the Bill, intitled, (as before-mentioned); and Mr. *Townshend* was ordered to go to the Lords, and desire the said Conference; whither he accordingly went immediately; and being returned, reported, That the Lords did agree to a Conference, and had appointed the same presently in the *Painted-Chamber*. Upon this 'twas ordered, That the Committee, who had been appointed the Day before to prepare Matter to be offered to the Lords at a Conference, should manage the said Conference; and their

their Names being called over, they went to the Conference; and being returned Mr. Attorney General reported, that the Managers had been at the Conference, and had delivered to the Lords what the House had directed.

Next Day, being *Wednesday, May 18*, the House of Commons received a Message from the Lords, *viz.* That their Lordships did desire a present Conference with them in the Painted-Chamber, upon the subject Matter of the last Conference; which was immediately resolved, and the Messengers being again called in, were acquainted therewith. Then 'twas ordered, That the Committee who managed the last Conference, should manage that Conference; and the Names of the Managers being called over, they went to the Conference; and being returned, Mr. Attorney General reported the Conference, and that the Lords had delivered to the Managers an authentick Extract of the Proceedings in the Trial of Captain *John Porteous*, wherein was contained the Verdict against the said Capt. *Porteous*, the Sentence of the Lords of Justiciary in Scotland against him, and the Reprieve of the said Capt. *Porteous*, granted by her Majesty, as Guardian of the Realm; and also a Letter from *Alexander Wilson*, Provost of *Edinburgh*, to Major-General *Moyle*, Dated, *Edinburgh, April 13, 1736*. which authentick Extract and Letter were brought up to the Table; and the Report being read, 'twas ordered, That Mr. Attorney General and Mr. Solicitor General, should take care, that the Evidence for the Ingrossed Bill from the Lords, intituled, (as before-mentioned) should be ready to be produced to that House upon that Day se'nnight; and likewise, that Mr. Attorney-General should appoint Counsel learned in the Law, to produce and manage the Evidence at the Bar of that House, upon that Day se'nnight, to make good the Allegations of the said Bill; and that the following Persons should attend that House on that Day se'nnight, *viz.* Major General *Moyle*, Colonel *Druroure*, Major *Robertson*, Major *Poole*, Captain *Bendish*, Lieutenant *Ashton*, Mr. *John Din*, Mr. *John Bailly*, Mr. *Alexander Nisbett*, Mr. *Robert Stuart*, Mr. *George Irvine*, Mr. *Thomas Young*, Mr. *Roderick Brown*, and Mr. *Christopher Chiffelm*.

On *Friday* the 20th was presented to the House and read, a Petition of *Alexander Wilson*, Esq; Lord Provost of the City of *Edinburgh*, averring his intire Innocence of the several Matters alleged against him in the Preamble of a Bill then depending in that House, intituled, (as before mentioned;) and therefore praying, that he might be heard by his Counsel against the said Bill, at the second reading thereof; which was accordingly ordered. And on the *Tuesday* following was presented to the House and read, a Petition of

the Magistrates and Town-Council of the City of *Edinburgh*, in Name of themselves and Community of the same; setting forth, that the Petitioners apprehended, that if the Bill then depending in that House, intituled, (as before mentioned) should pass into a Law, it would greatly affect and tend to destroy the Rights, Franchises, Privileges, and Liberties of the said City of *Edinburgh*; and therefore praying, that the Premises might be taken into Consideration, and that the Petitioners might be heard by their Counsel against such Parts of the said Bill, as affected the said City; which was accordingly ordered; and then Captain *Lind* and Mr. *James Allen* were ordered to attend that House next Morning; when upon reading the Order of the Day, for the said Bill's being read a second Time, 'twas proposed to put off the second Reading of it for a Month; but a Motion being made for reading it a second Time on that Day se'nnight, after some Debate the Question was put upon the Motion for reading it a second Time on that Day se'nnight, which upon a Division was carried in the Affirmative by 140 to 99. After which the several Persons who were ordered to attend on that Day, were ordered to attend on that Day se'nnight.

Accordingly on *Wednesday, June 1*. the Order of the Day being read, the Counsel for and against the Bill were called in, and the Bill being then read a second Time, the Hearing of Counsel, and Examination of Witnesses began, and was continued all that Day, all *Thursday, Friday, Monday, Tuesday*, and *Wednesday* following; on which last Day, the Hearing of Counsel for and against the Bill being ended, and the Counsel withdrawn, Mr. Speaker opened the Bill, whereupon a Motion was made for its being committed; but a Debate arising, and it being then late, the Consideration of the said Motion was adjourned till next Morning, being the 9th of *June*; when the same was resumed, and after a long Debate, the Motion was upon a Division agreed to by 124 to 118; and it being resolved, that the Bill should be committed to a Committee of the whole House, it was next resolved, that the House would on the *Monday* following resolve itself into a Committee upon the said Bill.

Upon this Occasion it was at first proposed, that the House should next Day resolve itself into the said Committee; but some Members took Notice, that next Day, being the 10th of *June*, they thought it a very improper Day for them to go into a Committee on such a Bill. The Scope of the Bill, as it then stood, was for demolishing the Ports and dismissing the Guard of the City of *Edinburgh*, those very Ports, and that very Guard which had enabled that City to keep the

Pretender out in the Year 1715; and for doing this they were to chuse that very Day which was celebrated by all *Jacobites* as the *Pretender's* Birth-Day. This they thought was not very prudent; it would be a Matter of Triumph to all *Jacobites*, who would not fail to represent it as a Judgment upon the City of *Edinburgh* for shutting their Gates against their lawful and rightful Sovereign, as *Jacobites* were pleased to call the *Pretender* to his Majesty's Crown and Kingdoms. This Consideration, they hoped, would have some Weight against agreeing to that Part of the Bill, when they went into a Committee upon it; but they took notice of it at that Time only to prevent the House's going into a Committee upon such a Bill on such a Day. For this Purpose they hoped it would be of sufficient Weight; and that therefore no Gentleman would insist upon the House's going into a Committee upon that Bill till *Monday* then next.

This seemed to be the Occasion of putting off the Commitment of the Bill till *Monday*; and on *Monday* the House having resolved itself into the said Committee, the Preamble and every Clause of it was opposed, and upon each there was a Sort of distinct Debate, several of which were pushed so vigorously, and with so much Success by the opposing Party, that the Bill not only changed its Name, but in some Manner its Form; as may be seen by comparing the Copy we have given as it was sent from the other House, with that which is now passed into a Law.

Nay in the Committee, the Bill run a very great Risk of being quite lost; for after all the Amendments had been made, the Bill then appeared to be so very different from what had been sent them by the Lords, that when a Motion was made for reporting the Bill with the Amendments to the House, the same was strenuously opposed; and after a long Debate, when the Question was put, the Division was 130 for reporting, and 130 against it; so that it came to the casting Vote of C—l B—n, who was Chairman of the Committee, and who gave his Vote in favour of the Bill; tho' it has generally been observed, that where such a Case happens, the Chairman has always given his Vote for that Side of the Question which is against any Alteration of our Laws, or in Favour of any Person that is to suffer by a new Law. But there was another Circumstance which contributed to the passing of this Bill, or rather prevented its being lost; for at this very Time, when this equal Division happened, J—s E—ne of G—ge, E'q; and Mr. S—r G—l for Scotland, were both in the House of P—rs engaged as Counsel in the Hearing of an Appeal there; which both of them endeavoured as much as they could to have put off, in order that they might be present

and upon their Duty in the House of C—ns; but this Request was refused; so that neither of them was present upon this Debate or Division in the House of C—ns; and as both of them had often before declared themselves against every Part of this Bill, it is probable, if they had been present, they would have voted against reporting the Bill, which would have prevented its being in the Chairman's Power to do what he did.

The Motion being thus carried for reporting the Bill with the Amendments, the Report was ordered to be received the next Morning; and C—l B—n having accordingly reported the Amendments that Day, the first Amendment made by the Committee, which was that for leaving out the several Clauses for Demolishing the *Nether-bow Port*, and for taking away the Guard of the City of *Edinburgh*, was read a second Time and agreed to by the House; then the other Amendment made by the Committee, being the Clause for imposing a Fine upon the Corporation of the City of *Edinburgh*, was read a second Time; and a Motion being made for re-committing that Amendment, after a long Debate, the Question was put upon the Motion, and was carried in the Negative, by 144 to 123; after which this Amendment was afterwards agreed to by the House; and then the Bill was ordered to be read a third Time next Morning.

On *Wednesday, June 13*, this famous Bill was read a third Time, and several Amendments were made to the Title, which had become necessary from the Amendments made in the Committee to the Bill itself; after which a Motion was made for passing the Bill, which occasioned a new Debate; but upon the Question's being put, it was upon a Division carried in the Affirmative by 128 to 101; and Colonel *Bladen* was thereupon ordered to carry the Bill to the Lords, and acquaint them that that House had agreed to the same with some Amendments, to which they desired the Concurrence of their Lordships.

As the Bill had received considerable Amendments in the House of C—ns, when it was returned with these Amendments to the House of L—ds, some of their Lordships thought it then look'd more like a new Bill than the Bill they had sent down; and they farther thought, the enacting Part of the Bill, as it then stood, was no Way correspondent to the Preamble; therefore they thought, that either the Amendments ought not to be agreed to, or the Preamble ought to be left out or very much altered; so that there was a long Debate upon the Motion made in that House, for agreeing to the Amendments made by the Commons; but at last upon a Division the Question was carried in the Affirmative by 41 Contents, to 17 Not Contents; and

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Monday, June 20, it was returned to the H—se of C—ns, with their Amendments agreed to; and, among others, received the Royal Assent at the End of the Session.

Thus we have given a short History of the passing of this famous Bill; in almost every Step of which there were long Debates, and so many good Arguments made use of, and so many remarkable Things said, that it would make a very large Volume to give a tolerable full Account of them; so that it cannot be expected in the narrow Limits to which we are obliged to confine ourselves; therefore we shall only collect some of the most material Arguments that were made use of for and against the Amendments proposed and agreed to in the H—se of C—ns; in which, however, we shall throw in some of the most material Arguments that were made use of for and against the Bill itself, both in that House and in the H—se of L—ds. But first we must take Notice, that upon the Bill's being sent first down to the H—se of C—ns, some Objections were made by J—s O—pe, Esq; and other Members of that House, to the Bill's being allowed even a first Reading; which were in Substance as follow, viz.

Sir, when I oppose the Bill now brought to us for our Concurrence, either now upon its first Appearance, or in any other Step it makes through this House, I hope it will not be thought that I approve of the Riot or the Murder, that was committed upon that Occasion which gave Rise to the Bill. All Riots and Tumults I have in as great Abhorrence as any Gentleman of this House; and there is nothing I think a Government ought to be more jealous of, than their sole Privilege of distributing Justice or shewing Mercy. When either of these comes to be assumed by the Populace in a tumultuous Way, when the Mob begins to distribute Justice, or to oppose the shewing of Mercy, it puts an End to all Government, and for that Time at least dissolves all Society. Therefore all Riots and Tumults ought to be punished severely; but then they ought to be punished in a regular Manner, and not in such a Manner as may overturn the Constitution of your Government.

It is this, Sir, which makes me rise up to oppose this Bill upon its first Appearance: It is a Bill of such a Nature that I think this House ought not to receive it: If you do, you will, in my Opinion, give a Wound to the Privileges of the Commons of *Great Britain*. Bills of Pains and Penalties are Things, in themselves, of a dangerous Nature; we ought not, but upon the most extraordinary Occasions, to make use of any such Method for inflicting Punishment; and when we are obliged to make use of such a Method, the Bill ought to take its Rise in

this or the other House, according to the Persons who are to be punished. If a Peer of the Realm had committed any Crime, for which it might be necessary to punish him by Way of a Bill of Pains and Penalties, does any Gentleman think the other House would receive a Bill for that Purpose from us? No, Sir; if a Peer of the Realm, a Member of the other House, were but one of the Persons so to be punished, I believe the other House would insist upon his being punished by a Bill to be first brought in and passed in their House; and if any Member of this House were to be punished by any such Bill, for the same Reason we ought, surely we would insist upon it that the Bill for that Purpose ought to take its Rise in this House.

Now, Sir, I should be glad to know a Reason why we should shew less Respect to the Counties, the Cities, or the Boroughs we represent, than we would do to any of the Gentlemen they send here to represent them; for if there be any Difference to be shewn, I must think the former deserve more of our Care, they ought to have a greater Respect shewn to them upon all Occasions by this House, than the latter can pretend to. Shall we then receive from the other House a Bill for inflicting Pains and Penalties upon any Corporation in *Great Britain* that has its Representative in this House? Suppose, Sir, this Bill had enacted, among other Pains and Penalties, that the City of *Edinburgh* should from hence-forth cease to be a City or Corporation, Could any Gentleman, after the Passing of such a Bill, have kept his Seat in this House as Member for that City or Corporation? Sir, he must have ceased to be a Member, as soon as the Corporation he represented ceased to be a Corporation; and shall we ever receive a Bill from the other House for turning one of our own Members out of Doors?

'Tis true, Sir, the Bill now presented to us for our Concurrence, does not in express Words put an End to the City and Corporation of *Edinburgh*; but it does something very near tantamount; for if you take from a Corporation their Power of Watching and Warding, I do not see how they can afterwards well subsist as a Corporation. I shall not now enter into the Merits of the Bill; I shall not enquire, whether the City of *Edinburgh* deserves the Punishment to be inflicted upon it by this Bill. I think it does not. But it is enough to me that a City, which has its Representative in this House, is to be punished. This, I say, is enough to me for thinking that the Bill ought not to have taken its Rise in the other House; that we ought not to receive such a Bill from them; that we cannot receive it without sacrificing the Privileges of this House, and the Privileges

leges of all the Places we represent. I hope no Gentleman thinks, there is the less Respect to be shewn to the City of *Edinburgh*, because of its being in *Scotland*. Sir, it is now a City of *Great Britain*, it is the second City of *Great Britain*; and if such a Bill had come from the other House against the meanest Borough of *Scotland*, that has a Representative, or a Part of a Representative, in this House, I should have been against our receiving the Bill. We are in Honour obliged to protect the Commons of *Scotland* as much as the Commons of *England*; because they trusted to our Honour when they united with us upon the Terms they did. We are in Prudence obliged to protect the Privileges of every Borough in *Scotland*, as much as the Privileges of any Borough in *England*; because no Inroad can be made, no Injury can be done to the one, but what may be made a Precedent for doing the same to the other. If we allow the other House to inroad upon the Privileges of the Commons of *Scotland*, it will be a Precedent for their inroad upon the Commons of *England*. If we accept of this Bill, if we give it a Reading, I shall soon expect to see a Bill brought us from the other House, for turning some of our Members out of Doors. Therefore, Sir, I am against its being read a first Time.

To this it was answered in general,

That the Bill's being brought in by the other House, did not proceed from any Design to inroad upon the Privileges of that House, but from the other House's having first entered upon an Enquiry into that atrocious Riot, that cruel Murder, which had happened at *Edinburgh*; and the Reason for their being the first to enter upon that Enquiry was evident, from the Nature of the Business that usually came before the two Houses; for in the other House, they had generally little to do in the Beginning of a Session; whereas in that House, the providing Supplies for the current Service of the Government, took up so much of their Time in the Beginning of a Session, that they had not Leisure to enter upon any particular or extraordinary Affair. That upon that Enquiry the other House were of Opinion, it was absolutely necessary to inflict some Punishment upon the City of *Edinburgh*, in order to make that and every other City more careful to prevent Mobs, and more active in suppressing them, for the future. That as this was their only Aim, as it was an Aim which that House could not but approve of, they hoped the House would not be too jealous of their Privileges upon such an Occasion; for even tho' it were indisputable, that the other House ought not to be allowed to bring in a Bill for inflicting Pains and Penalties upon any City or Borough in *Great Britain*, yet in a Case where no

Inroad was intended, and which might so greatly contribute to the domestick Peace and Quiet of the Kingdom, it was absolutely necessary for both Houses not to be over scrupulous in Point of Privilege. And that as the other House had begun the Enquiry, as upon that Enquiry, they had found it absolutely necessary to inflict some Punishment upon the City of *Edinburgh*, and upon the chief Magistrate thereof at the Time the Mob happened, they hoped Gentlemen would consider, the other House had then no other Way of Proceeding, in order to inflict that Punishment, than by bringing a Bill for that Purpose. Therefore they hoped no Scruple would be made to the Reading of the Bill, and upon the second Reading they would see, whether the other House had had good Reason for passing such a Bill; when they might either concur with the other House in passing the Bill, or might reject or amend it as they saw Cause.

To which it was reply'd in general,

That 'twas true the first Part of the Session was generally taken up in that House with granting Money to the Government; but it was not wont to be so; for in former Times, their first Business was to enquire into Abuses, and redress Grievances; and if that House had taken Example by their Ancestors, instead of voting a Supply the 2d or 3d Day of the Session, they would have voted an Enquiry into those Riots and Tumults, which of late had been so frequent and so general all over the Kingdom; for the People never grew tumultuous without some Cause, and 'twas very probable the late Tumults had proceeded from some Abuses or some Grievances which they ought to enquire into. That the best Way of judging of Mens Intentions was by their Actions; and as the Bill brought from the other House was certainly, as they thought, an Inroad upon the Privileges of that House, the surest and safest Way of Judging was, to suppose an Inroad was intended. That Inroads had always been made at the most favourable Junctures; and if ever the other House should endeavour to inroad upon that, they would always take Occasion to do it, with respect to Bills which might seem absolutely necessary; so that if they made the Expediency, or even the Necessity of a Bill, a good Reason for submitting to an Inroad, they would very soon have no Privileges left. That as that House was the grand Inquest of the Nation, it was their proper Business to enquire into all publick Abuses, especially where any of their own Members were concerned; and that if the other House did upon any Occasion take upon them to enquire into any such publick Abuse, they ought to proceed no further; they might then at a Conference communicate to

that

that House the Discoveries they had made, and leave it to that House to proceed by Impeachment or by a Bill of Pains and Penalties; which the other House might have done in the present Case; and their not having done so seemed to shew, they had an Intention to take Advantage of that favourable Opportunity for making a little Incroachment upon a Privilege, which they knew would have otherwise been strenuously contested. That whether or no there was a Necessity for punishing the City, or any of the Magistrates of *Edinburgh*, could not then appear to them, and therefore could not be an Argument of any the least Weight in that Debate; but suppose there was such a Necessity, there was no Necessity of the Session's breaking up at a certain Day. They might go upon an Enquiry immediately; the Witnesses were all in Town; these Witnesses might soon be examined, and upon that Examination, they might order a new Bill to be brought in, if they saw Cause; and that new Bill might pass through both Houses long before it would be absolutely necessary to put an End to the Session: Therefore they saw no Inconvenience could ensue from their not receiving the Bill then brought them from the other House; and for that Reason they could not agree to its being read a first Time.

This was the Substance of what was said upon this Bill at its first Appearance in the House of Commons; but as a great Majority seemed to be for reading the Bill, there was no Division upon the Question.

We shall now give the Substance of what was said for and against the Amendments made to it in the House of Commons, in which we shall comprehend the most material Arguments that were made use of in either House for and against the Bill itself. These Amendments were, To leave out the Clause for imprisoning the Lord Provost of *Edinburgh*, as also the Clause for taking away the City Guard, and the Clause for taking down the Gates of the *Nether-Bow Port*; and instead of the last two Clauses, to insert a Clause for subjecting the City of *Edinburgh* to a Fine of 2000 *l.* to be applied to the Widow of Captain *Porteous*. The Arguments for the first three of these Amendments, and against the last, as well as against the Bill itself, were in Substance as follow, viz.

Sir, as I am against the Bill itself, as I think it impossible to amend it so as to make it a good Bill, therefore I must of course be for the first three Amendments proposed; because if it should pass so amended, it will be a less Evil, than if it should pass as it stands at present; but as my Reasons for being for these three Amendments, and my Reasons for being against the fourth Amendment, will appear in a much stronger Light, after I have

given my Reasons for being against the Bill, therefore I shall beg Leave to shew you my Reasons for thinking it impossible to make the Bill now before you either a good or a just Bill. The Charge against the Magistrates and City of *Edinburgh*, so far as I can comprehend from the Preamble of this Bill, and from the Proof that has been brought for its Support, seems to be founded upon their not taking proper Care to prevent the Tumult before it happened, notwithstanding their being fully apprized that such a Thing was intended; upon their not using proper Measures to suppress the Tumult after it had begun; and upon their not using proper Means to discover, apprehend, and secure the Authors and Abettors of the Murder that was committed. Thus the whole Charge is founded upon Negligence only, or rather upon Want of Wisdom and Foresight; for it is not so much as pretended, I am sure it is not proven, that any one of the Citizens of *Edinburgh*, and much less any of their Magistrates, was actually concerned in the Tumult, or in the Murder that was committed by the Rioters.

Now, Sir, suppose every Word of this Charge true, suppose every Word of it had been fully proved, I do not think it by any Means a proper or a just Foundation for any such extraordinary Method of Proceeding as a Bill of Pains and Penalties. As this is a most extraordinary, as it is a most dangerous Method of Proceeding, it ought never to be made use of but for punishing Crimes of a most extraordinary and a most dangerous Nature; for if this Method should once come to be commonly used for punishing little Transgressions, and even little Omissions, without so much as an Allegation of a malicious Intention, no Person in *Great Britain*, natural or political, can have a Moment's Security, if there should be a prevailing Party in Parliament against him: Even Innocence itself, even the Fear of offending, may betray a Man into some little Omission, which may give his Enemies a Pretence for ruining him by a Bill of Pains and Penalties. It will not then be enough for a Man not to offend those in Power, he must obey them, he must truckle to them, he must serve them in their most dirty Jobs; otherwise he will be every Day in Danger of perishing by a Bill of Pains and Penalties, for not doing what he perhaps abstained from doing for Fear of giving Offence.

Bills of this Nature are of dangerous Consequence when brought against private Men, but still more so when brought against Corporations or Communities. We have, 'tis true, had some Examples of punishing Cities or Corporations for Crimes committed by their Magistrates or Citizens; but such Precedents I must always think dangerous, I shall always think

think unjust; for a Mob, an Insurrection, or even a Rebellion, in any City or Borough, was never, I believe, so general as to admit of no Exception; and if there was but one innocent Man in the City or Borough, an Injustice will be done to him by any Punishment inflicted on the Community. These are Precedents which have seldom or ever been followed by a wise and mild Administration; and they are Precedents which may be made the worst Use of by an ambitious and tyrannical one. They are Precedents which may be made use of for fright'ning every City and Borough of the Kingdom into a mean Compliance with every Command of a prime Minister, by which Means he may always have a Majority in this House, as ready as their Constituents to obey his most wicked Commands. By such a Parliament, and by Means of such Bills, even Counties may be robbed of all their Privileges, and that on Account of a Mob raised there perhaps for that very Purpose by the Tools of Power. But of all the Precedents I ever heard of, this now before us is, I think, of the most dangerous Nature. When the Magistrates or Inhabitants of a City or Corporation, or the Members of any Community, have been openly and maliciously guilty of any heinous Crime, the Inflicting of a Punishment upon the Community for the Crimes committed by its Members, may not be of such dangerous Consequence; because it can never be made a Precedent of for persecuting any other Community altogether innocent; but if you make the Negligence, or even the Pusillanimity, of the Magistrates, or of the Inhabitants, a good Pretence for taking away by Bill any of the Privileges or Franchises of the City or Corporation, no Corporation in *Great Britain* can be secure of any of its Privileges; because a prevailing Party in Parliament may judge that to be Neglect or Pusillanimity, which was really in itself a wise and a prudent Behaviour. A Tool of Power may be hired to provoke the very Dregs of the People to pull his House down, or to duck him in a Horse Pond; and because the Magistrates did not, or could not, come time enough to prevent the Mischief he richly deserved, it may be made a Pretence for disfranchising the Corporation by a Bill of Pains and Penalties. Thus a Sort of Parliamentary *Quo Warranto's* may be issued against every Corporation in *Great Britain*, that happens not to be in the good Graces of the prevailing Party in Parliament.

Magistrates I shall allow, Sir, ought to be vigilant and diligent in their Office. No Man is fit for being in any Station of Magistracy, if he is either indolent or pusillanimous; but Magistrates are but Men, and liable to the same Frailties with other Men;

therefore, if by this Precedent, you make it a Crime in a Magistrate to be guilty of the least Neglect or Misconduct, if you make it a Crime of such an extraordinary Nature, as that he may be prosecuted by an extraordinary Method in Parliament, and subjected to extraordinary and arbitrary Punishments, I am sure no wise Man will hereafter accept willingly of any Office of Magistracy; and if he should by Law be forced to accept of it, it would be both severe and unjust to punish him for Misconduct only. The Punishment to be inflicted by this Bill upon the Lord Provost of *Edinburgh* may, to some Gentlemen seem no way rigorous or severe; considering his present Majesty's known Wisdom and Lenity, I am convinced he will not find it so; but a Year's Imprisonment in any Goal or Prison within the Kingdom of *Great Britain*, to which any Secretary of State may from Time to Time by his Warrant direct him to be carried and confined, might be made a Punishment terribly severe. He might be kept in Irons all that Time, he might be confined in a Goal remote from his Country and Friends; he might be privately removed from Goal to Goal, so that his Friends should never know where to find him, in order to bring him Subsistence, or administer to him any Comfort; or he might be publicly carried about in Irons, and under a strong Guard, from one End of the Kingdom to the other, in order to strike Terror into the People, and to frighten them into a slavish Submission. This I am sure would be a Punishment too severe for any Crime he is accused of; and therefore, if he does not meet with too much Severity, it will not be owing to the Parliament who pronounce the Sentence, but to the Secretary of State who puts it in Execution. For this Reason, I must look upon this Punishment, mild as it may be made by his Majesty's Wisdom and Lenity, as a most dangerous Precedent; because future Parliaments may be hereby induced to inflict the same Punishment for the same Sort of Neglect, and future Kings, or their Ministers, may not perhaps be so merciful in the Execution.

The Reasons I have hitherto made use of against this Bill arise from the general Principles of Prudence and Justice; but now, Sir, I shall go a little farther, and observe, that the Passing of this Bill will, in my Opinion, be a Breach of the Law of Nations. Treaties between different Nations have always been held sacred, and ought to be religiously observed. The Treaty of Union between the Nations of *England* and *Scotland* is a Treaty now subsisting, and a Treaty which, I hope, will always be most religiously observed by the Parliaments of *Great Britain*. By the 21st Article of that Treaty it is expressly stipulated, That the Rights and Privileges

leges of the Royal Boroughs in Scotland shall remain entire; and as by this Bill the City of *Edinburgh*, the first and chief Royal Borough of *Scotland*, is to be stript of its Gates and Guard, I must look upon the Bill as an Infringement of that Article of the Union; for surely the having of Gates which the Magistrates may shut up when they think proper, and the keeping of a Guard for the Defence and Protection of the Inhabitants, must be looked on as Part of the Rights and Privileges of the City of *Edinburgh*; therefore, after these two Rights or Privileges are taken away from that City, it cannot be said that the Rights and Privileges of the Royal Boroughs of *Scotland* remain entire.

I have already shewed, that to punish a Community for the Fault of its Members, is doing an Injustice to every private Man of that Community who is innocent; but by the Punishments we are to inflict upon the City of *Edinburgh* by this Bill, we do what is still worse, we violate the Law of Nations, we do Injustice to the whole Kingdom of *Scotland*, by breaking through one of the most solemn Articles upon which it united with *England*; and for what Purpose are we to be guilty of this Piece of publick as well as private Injustice? Not to prevent Mobs, but to encourage them. In this Light these two Punishments really appear to me ridiculous; we cannot do a greater Favour to those People in and about *Edinburgh*, who are inclined to be mobbish, than to take away the Gates and the Guard; we cannot do a more acceptable Piece of Service even to those who murdered *Porteous*: They will look upon our taking away and cashiering the City-Guard, as a Punishment upon that Body of Men, for their having fired upon the Mob at the Execution of *Wilson*. Our laying the City Gates open will be affording an Opportunity to the Country Mob and the City Mob to join Forces, whenever they have a Mind; and by Experience it is well known, they were never dangerous but when they joined together. Then by taking away the Guard we remove that which they were always most afraid of, as appears from its being the first Thing they took care to secure, when that Mob began which murdered *Porteous*. But by laying open the *Nether-Bow Port*, 'tis said, we shall open a Way for the King's Forces to come, as soon as called, to the Assistance of the Magistrates. No such Thing: We shall make their Access more difficult: The Street where that Gate stands is very narrow; there are always a great Number of Carts and Wheel Carriages standing near it, by which the Street may be so barricaded in a few Minutes, that it will be much more difficult for the Forces to make their Way through, than it would be for them to blow up a Gate; for those who know

any Thing of the Military, know it may be done almost in an Instant. It was not the Gate, Sir, that prevented the Forces marching to the Relief of the Magistrates; it was their having no proper Orders, and the Impossibility there was for sending them any such; and by laying open the Gate, you will only instruct the next Mob that happens, to secure themselves by a Barricade, better than they could do by a Gate; and to take proper Care to secure every Magistrate, who can give Orders to the Troops to enter the Town, which they may the more easily do, after you have taken away that Guard, which might be able to protect the Magistrates, at least till they had Time to send for the Troops.

Sir, the evil Consequences of laying open the City Gates, and taking away its Guard, are innumerable. By keeping the Gate always open, you will injure the Publick as well as the City Revenue; for you will thereby greatly encourage Smuggling, and you will make it impossible for the City to raise that Duty which has been granted them by Parliament, upon every Pint of Ale brought into their City. Then as to their Guard; it is the only Method they have for protecting their Citizens against House-Breakers, Street-Robbers, and drunken or dissolute Fellows, who often walk the Streets with a Design to assault and beat, or abuse, every Person they meet. The City of *Edinburgh* has no Watchmen, nor can they now oblige their Inhabitants to keep Watch and Ward, as was formerly the Custom before their Guard was established. Thus that City will be by this Bill bereft of the only Means it has of defending itself or protecting its Inhabitants; for which Reason I must look upon the Bill in some Measure as a Dissolution of the Corporation; for if you take from a City all Means of defending itself, or protecting its Inhabitants, I am sure it will very soon come to have few Inhabitants to protect, and must therefore at last cease to be a City. And what is all this for, Sir? The only Pretence I have heard, is, that his Majesty's Troops may have free Access to the City, which is a Pretence I wonder to hear made use of by those who pretend to be Sticklers for Liberty. But even this Advantage, if it be one, may be had without divesting the City of any of its Rights or Privileges. There is no Gate between the Castle and the City, the Castle is the King's own House, and if it be necessary his Majesty may lodge as many of his Troops there as he pleases, with Orders to assist the Magistrates of *Edinburgh*, when called by them for that Purpose.

At the Time the last Mob happened, I shall grant, Sir, neither the Gates nor the Guard of the City of *Edinburgh* were of any great

great Service; but I am sure neither of them was of great Prejudice; and they have both been of great Service upon former Occasions; for by the Assistance of the Guard only many Mobs have been suppress'd, when the Magistrates were so lucky as to hear of their assembling, before they came to any Head; and many more have probably been prevented, considering the Unruliness of the People of that Country, which will be their Case, as well as it is the Case of every free People, as long as there is any Courage or any Spirit of Liberty left in the Country. Indeed, if you have a Mind to destroy the Liberties of the People of Scotland, other Measures must be taken; but I must tell you, it cannot be done, but by such an Army as will leave the People of England very little Liberty to boast of. Then as to the Gates, 'tis certain, at the Time of the last Mob they were of no Prejudice; for if the regular Troops had had proper Orders to march into the City, they would soon have forced open the first Gate they came to; and those very Gates have formerly been of signal Service, not only to the City of *Edinburgh* but to the whole Nation. In the Year 1715, the Gates and the Guard of the City of *Edinburgh*, for what I know, preserved the Liberties of Great Britain; at least they prevented their being brought so near the Brink of Ruin, as they would otherwise have been. The Attempt upon the Castle in the Beginning of that Rebellion, was frustrated by the City Guard's coming upon them, before they had got all the Ladders they had provided for Scaling the Walls: If this Attempt had succeeded, and never was there a Plan of Treason better concerted, or more secretly kept, considering the Numbers that were engaged in it, I say, had it succeeded, it would have made the Rebellion much more formidable. Soon after, a numerous Body of the Rebels came very near to the Gates of *Edinburgh*, but those Gates were shut against them, and guarded by the City-Guard. As the Rebels had no proper Engines for forcing open the Gates, this prevented them from getting Possession of that City, which, if they had, would have furnished them with so great a Provision of Horses, Arms, and Ammunition, and they would have been joined by such Numbers of Men, that I am afraid the King's Army must have decamped from *Stirling*, it not being then above 1700 Men, tho' it was called many thousands in the *London Gazette*. If this had been the Case, the Rebels would soon have got the entire Possession of Scotland, and might soon have entered England with a formidable Army, which might have been of the most dangerous Consequence, considering the great Party that was then in England ready to join them. Upon this Occasion the Citizens

of *Edinburgh* in general behaved with such Fidelity and Steadiness towards the present Royal Family, and acted with such Vigour, that had they been actually guilty of the Contempt put upon the Crown by the Murder of *Porteous*, their former Services would plead for Compassion and Forgiveness from his Majesty, and all those who are Friends to his Family.

I have hitherto argued, Sir, upon the Supposition, that every Word of the Charge against the Provost and Citizens of *Edinburgh* is true; and even upon that Supposition, I think, I have shewn, that the Charge can no Way justify such an extraordinary Method of Proceeding; that punishing the City of *Edinburgh* for the Fault of its Magistrates or Citizens must be an Injustice done to every private Man of that City who is innocent; that such Precedents are always dangerous, and more dangerous in this Case than any other; that the Punishment proposed to be inflicted on the Provost is too severe; that the Stripping the City of *Edinburgh* of any of its Rights or Privileges will be a Breach of the Articles of Union, and a publick Injustice done to the whole People of Scotland; that the Penalties proposed to be inflicted on that City can be of no Service to the Publick, but on the contrary may probably be of great Prejudice both to the Publick and the City; and that, were the Citizens of *Edinburgh* really guilty of the Crimes laid to their Charge, their Services to Liberty and the Protestant Succession may plead for Compassion and Forgiveness. These Arguments, I hope, will have great Weight with every Gentleman that hears me, even suppose the Charge had been fully proved; but if it should come out that no one Word of it has been proved; if it should appear that the Provost was guilty of no Crime, nor of any Neglect or Omission, but what a provident, a vigilant, and even a resolute Magistrate, might have been guilty of upon the like Occasion; if it should appear that no Citizen of *Edinburgh* has been guilty of any criminal Action, or of any Omission, that is in the least blameable, surely the Arguments I have made use of must be irresistible.

For this Reason, Sir, I must beg Leave to consider the Behaviour of the Provost and Citizens of *Edinburgh*, according to the Proofs before us, at the three different Periods mentioned by the Counsel at the Bar; and first with respect to their Behaviour before this Mob happened. It has been proved by several Witnesses of good Credit, that the Report of the Mob's being resolved to hang *Porteous* was spread only among Women and Children, and that it was by all Men of Sense treated as a foolish Surmise: Nay, it has been proved that even Mr. *Porteous* himself treated it as such. Yet the Provost was so

vigilant as to resolve not to treat it as such, and therefore he had determined in Council, that the whole *three* Companies of the City Guard should mount on the *Wednesday*, which was the only Day he and most others had heard was intended, as the Day on which the Mob were to attempt executing their wicked Purpose; and he had determined farther in Council, that on that Day both he and the other Magistrates, as also the whole Members of the Town-Council, should attend with the Badges of their respective Offices, in order to strike the Populace with the more Awe, and to be ready to quell any Mob that should begin to appear. The Provost therefore cannot at this Period be accused of any Neglect or Omission; and as for the Citizens, it has not been proved that any of them had certain Information of such a Design, and concealed that Information: Those who heard any Thing of it, heard it only from foolish Women and Children; and they were so far from concealing, that they told publicly what they had heard, which was all they could do upon any such Information.

Then, Sir, with respect to the Behaviour of the Provost and Citizens at the Time the Tumult happened, and during the Time it lasted: It has been proved that the Moment he heard a Tumult was beginning, he ordered the Captain of the Guard then on Duty to draw out his Men, and not only resolved, but presently followed the Captain, to put himself at the Head of the Guard; which was more than could be expected from a Man of his Age and Education. But in this brave Resolution he was disappointed by the Mob's having got Possession of the Guard. Upon this, what did he do? Did he run and hide himself, as many would have done upon finding that the Mob were Masters of the Town? No, Sir, he remained in the Streets, he consulted with his Fellow-Magistrates, and in the very Face of the Mob, tho' not, I am sure, to their Hearing, he gave those Orders which by the whole Company were thought the most proper, and, indeed, the only Orders that could be given: He sent an Hon. Gentleman of this House for the Assistance of the King's Troops; he likewise sent one of the Magistrates upon the same Message, lest the first should be intercepted; and he sent a third Gentleman after the first, in order to explain and add to the Orders first given. As the Provost was no military Man, nor knew exactly the commanding Officer's Instructions, he had all the Reason in the World to expect a verbal Message, sent by a Gentleman of such Distinction, would, at such a Con-juncture, have been successful, especially as the Messenger was well known to the Com-manding Officer. Therefore if he had done no more, if he had quietly waited at the Ta-vern, or some other more private Place, in

expectation of the Assistance he had sent for, his Conduct would have been blameless. But this he did not rest satisfied with, he sent for the Act of Parliament against Riots, in order that he might read the Proclamation as soon as he could find an Opportunity; with the few Persons he had along with him, he made two several fruitless Attempts to disperse the Mob; he pushed these Attempts as far as any Man of Prudence and Courage would have done, according to all the Witnesses that have been examined, except one whose Evidence is, in my Opinion, suspicious. He did not retire till after some of his Company were wounded, and the Mob began to call out to fire. I am, indeed, surprized that some of his Company did not lose their Lives: If it had not been the most regular and the most sedate Mob I ever heard of, I am sure some of them would; and tho' the Purpose of that Mob was certainly most wicked and atrocious, yet to the Honour of the lower Rank of People in that Country I must say, I am surprized, considering they were for so long a Time Masters of a rich and opulent City, that no more Murders, nor any Rape or Robbery, were committed. Notwithstanding these fruitless Attempts, the Provost did not despair of being able to quell the Mob, and prevent Mischief: When he saw the regular Troops did not come to his Assistance, he proposed to raise the Train'd Bands of the City; but in this he was disappointed by the Wife of that Person who had the keeping of the Muster Rolls, and who, it seems, was himself at that Time in the Keeping of his Wife; for she would not allow any Person to speak to him, nor deliver him any Message. Besides he could get no Access to the City Magazine of Arms; so that if he had got the Muster Rolls, he could not arm the Militia. Then he proposed to ring the Alarm Bell; but in this likewise the Mob had taken Care to disappoint him, by having taken Possession of the Tower or Steeple in which it hung. And when all his Designs proved abortive, when he saw it was impossible to prevent the Mischief intended; he then sent out Spies to intermix among the Mob, in order to discover who were the Actors. From all which I must beg leave to say, Sir, with all due Respect to the Bill now before us, that in this Period of Time, the Provost of *Edinburgh* deserves, in my Opinion, the Thanks rather than the Censures of Parliament; and as to the Citizens, it has been proved, that several of them came to the Assistance of the Provost, and with him endeavoured to quell the Tumult to the imminent Danger of their Lives; and as none of the Faces of those principally concerned in the Tumult, could be known, either by those sent out by the Provost with a View to make such Discoveries, nor by a worthy Member

of our own House, who has long resided in that City, and has with great Honour and Reputation gone thro' all the chief Offices in it; notwithstanding his having met Crowds of them going out of Town, as he returned from the Commanding Officer of the Troops; I say, as none of the Actors guilty Faces could be known by either of those Persons, it is to me a full Proof, no Citizen of *Edinburgh* was concerned in the Riot.

Lastly, Sir, as to the Behaviour of the Provost and Citizens after the Riot, I am surprized to hear it found fault with, since no Fact has been proved, no Neglect or Omission has been so much as mentioned by any of the Witnesses, from which the least Pretence can be taken, to blame the Conduct of either; and the Attorney and Solicitor General for *Scotland*, two Members of your own House, have testified for the Lord Provost that he was zealous, indefatigable, and keen, in promoting whatever could contribute to the Discovery of any of the Rioters or Murderers. They have told you, that near 200 Persons were examined upon this Occasion, without being able to discover, or to form so much as a Suspicion, that any one Citizen of *Edinburgh* was any way concerned in the Riot, except one poor Apprentice Boy, who had made his Escape, and has never since been heard of. I am really at a Loss to conceive, what Gentlemen would have had the Provost or the Citizens of *Edinburgh* to have done upon this Occasion. No Gentlemen can think the Provost ought to have put his Citizens to the Torture, in order to make them confess what they knew nothing of? Thank God! Our Laws allow of no such arbitrary and cruel Proceedings. Or do Gentlemen think the Citizens of *Edinburgh* ought to have come and accused one another, without the least Ground for any such Accusation? I must say, I am surprized, the great Reward that was offered has not produced a true Information; but, I thank God! it has not produced a false one.

The Citizens of *Edinburgh*, Sir, are so far from being under any just Suspicion of having been concerned in this audacious Riot and cruel Murder, that the contrary, I think, appears from all the Circumstances that have been proved, and from the Evidence of all the Witnesses that were examined at *Edinburgh*, or that have since been examined at this Bar. It appears that all the principal Actors were Country Fellows, whose Faces were not known to any of the Inhabitants of *Edinburgh*, either high or low; and it has been proved at your Bar, that there was a Report in the Country about *Edinburgh*, especially at

Dalkieth, a Village five Miles from *Edinburgh*, and situate in a Country full of Coal Mines and Colliers, who are a Sort of People very proper for such a desperate Attempt; I say it has been proved, that, at that Place, there was a Report, 10 or 12 Days before the Tumult happened, that a Conspiracy to murder *Porteous*, if reprieved, had been formed by the Friends of one *Ballantine*, a young Man of that Town, who was one of the Persons murdered by *Porteous* and his Guard, at the Execution of *Wilson*. These two Circumstances make it highly probable, that the principal Actors in this Riot and Murder, were Country Fellows, who had stole into *Edinburgh* for that Purpose; and this riotous and rebellious Spirit of theirs does not proceed from any Oppression in the Governors or civil Magistrates of that Country, as has been strongly insinuated, but from a few fanatical Preachers, lately started up in that Country, who by their Sermons and otherwise, instil into the Minds of the Vulgar and Ignorant such enthusiastical Notions as are inconsistent with all Government, by making Sedition and Rebellion a Principle of their Religion. * From this Cause I am inclined to think, the Tumult at *Edinburgh* proceeded; and to this is owing that ill-judged Fidelity of the Guilty towards one another, by which the Secret was before the Execution made impenetrable, and by which the Discovery of the Persons concerned has since been rendered impossible. But of the Inhabitants of *Edinburgh*, I am convinced, there are very few tainted with such Principles, because they seldom or never hear any such Doctrines.

I confess, Sir, it appears a little odd, that such an audacious Tumult should have happened, such a wicked Purpose should have been so successfully perpetrated in the City of *Edinburgh*, without any Fault or Neglect in any of the Persons entrusted with the Government of that City; but after the most impartial Enquiry, I can find no Reason to blame the Conduct of any of them, except the Captain of the City Guard. He, indeed, by the Evidence he has given at this Bar, has shewn himself blameable in several Parts of his Conduct. He has told us, that on the *Friday* before the Mob happened, the Provost gave him Orders to enquire into the Grounds of the Report that had been spread; but he was so far from complying with these Orders, that he went out of Town that very Evening, and did not return till the *Monday* Evening. He has told us there were 8 or 9 of his Men absent the very Night the

* This Observation was made by his Grace the Duke of Argyll, who has been scandalously misrepresented in the Gentleman's Magazine for October, Page 607. Col. 2. as if his Grace had thrown a Reflection upon the whole Clergy of Scotland, which he was certainly as far from intending, as they are from deserving.

Mob happened; and whether with Leave or without Leave, it was certainly his Fault they were so. He has told us, that when he was first informed of the Mob's gathering, instead of marching with a Party of his Guard to disperse them, which by the Custom of that City he ought to have done; for in such Cases he was not to wait for Orders from the Provost or any other Magistrate; I say instead of marching to disperse the Mob upon its first Appearance, or instead of staying to defend his Guard House against whatever might happen, he left his Post, he ran away both from the Mob and from his Post, under Pretence of going to acquaint the Provost with what had happened. Was this acting like an Officer? Does not every Gentleman see that this Conduct of his was the Cause of the Mob's getting Possession of the Guard Room, which greatly contributed to their Success; for if they had been disappointed in this their first Attempt, it would have discouraged them so, that they might probably have despaired of being able to execute, and consequently would have desisted from attempting any farther to execute, their chief Purpose. It is no Excuse for the Captain, that the Provost desired him to return to him. That Desire was no Order, and if it had, it was given upon a Supposition of no immediate Danger. When the Captain heard the Mob was up, and his Guard of Consequence in Danger, surely he ought not to have left his Post; he might have sent his Serjeant for Orders from the Provost. To this I must add, that the Keeper of the City Muster Rolls seems likewise to be greatly to blame; for if at other Times he was usually under Peticoat Orders, at such a Time, at a Time when the City was in such Danger, as he seems to have had some Share in the Government of that City, he ought to have put himself under the Orders of the chief Magistrate, and ought to have attended him for that Purpose.

I think I need not now, Sir, add any Thing in Favour of the *three* first Amendments proposed; for if I have not said enough for inducing Gentlemen to drop or throw out the Bill now before us, I hope, I have said enough for convincing every Gentleman that hears me, that the first three Amendments proposed, ought to be agreed to; and as to the Fine proposed to be laid on the City of *Edinburgh*, I cannot see the least Pretence for it; for I think it has been proved, as much as a Negative will admit of Proof, that the Citizens of *Edinburgh* had not the least Concern in the Riot that happened, or the Murder that was committed; and I think it appears that the Magistrates did as much as Men in their Circumstances could do, to prevent the Mischief that ensued. Besides this, I think it a dangerous Precedent to lay Fines or Mulcts on a City, for an Irregularity committed in the

City, when it is proved that none of the Citizens had any Hand in the Committing of that Irregularity; and if the Citizens of *Edinburgh* could be supposed to have been guilty of this Irregularity, I think the Fine proposed by much too considerable, with respect to the Circumstances of the City, which deserve the more to be regarded, because it has been proved, the low Circumstances they are now in proceed from the loyal and vigorous Measures they pursued in the Year 1715; and with respect to the Condition of the Person that was murdered, and the Person to whose Use this Fine is to be applied, I cannot help thinking it excessive; therefore I hope this Amendment will be entirely dropt, or the Fine very much mitigated.

Before I conclude, Sir, I must beg of Gentlemen to consider the dangerous Consequences of this Bill as to the Peace and Tranquillity of *Scotland*, and consequently of the whole Island. The Generality of the People there are already extremely uneasy at the proposing of such a Bill, and at several Steps that have been taken in relation to it. If the Bill should pass as it is at present; if the City of *Edinburgh*, the principal City of *Scotland*, should be stript of any of its Rights or Privileges, without any Regard shewn to its former Services, however such a Step may be look'd on here, it will certainly be look'd on by the whole People of *Scotland* as a Breach of the Articles of Union, and may probably make them ready to embrace the first Opportunity of getting rid of the Bargain they have made; which many of the People of that Country never thought either honourable, safe, or advantageous for them; and if they should once begin to think the Parliament of *Great Britain* has no Regard for the Articles upon which it was made, none of them will ever think it so.

To this 'twas answered in Substance as follows, viz.

Sir, As what has been said in Favour of the Amendments proposed chiefly consists in Reasons against the Bill itself, I shall consider them in that Light, because if I can shew there is nothing in the Bill but what is just and necessary, I shall at the same Time convince Gentlemen, that the Bill ought to be passed, and that the Amendments ought not to be agreed to. 'Tis true, the Charge against the Provost and Citizens of *Edinburgh*, consists in their neglecting to prevent the Tumult before it happened; in their neglecting to suppress it, or to take proper Measures for that Purpose, after it had happened; and in their neglecting to discover, apprehend, and secure those who were guilty of that audacious Riot, and cruel Murder. But this Charge, which is the Foundation of the Bill, is not to be considered as

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Negligence only; for he who does not prevent a Crime which he might, and ought to have prevented, has always in Law been look'd on, as some Way guilty of that very Crime; therefore, if it should appear, that the Magistrates and Citizens of *Edinburgb* might, and ought to have prevented this Tumult, or rather Insurrection; or that they might and ought to have suppressed it; or that they might and ought to have discovered, apprehended, and secured the Rioters and Murderers; if it should appear that they neglected any of those Measures which were obvious for accomplishing either of these Ends; the Neglect must then be look'd on as a Sort of wilful Neglect, and consequently they must be look'd on as guilty in some Measure of all those Crimes which were committed; and to every Gentleman who considers their Case in this Light, the Punishments propos'd by this Bill must appear merciful as well as mild.

It is with Pleasure, Sir, I observe, that every one who has spoke upon the present Occasion, has express'd the utmost Detestation of the Authors and Actors of that audacious Tumult and cruel Murder, which was not only an Insult upon Majesty, but an open Rebellion against Justice, a Rebellion even against Mercy itself. This makes the Crime the more heinous, and the more extraordinary. In all Ages, in all Countries, the People have generally been on the Side of Mercy. Here in *England* we have often seen, that a Criminal has, by this merciful Inclination of the People, been rescued from what they thought a too great Severity in the Laws; but the People of *Scotland* are, it seems, of another Temper. In no other Country, I believe, was it ever heard of, that, when the Mercy of a Sovereign has been extended to a Criminal, the People have frustrated that Mercy, by barbarously dragging him before the Tribunal of their own Inhumanity, and embrewing their Hands in his Blood. This is an Action of so black a Dye, that I think a perpetual Brand of Infamy ought to be stamped upon those Magistrates who heard of so barbarous a Design, and yet were so indolent (to call them no worse) as to make no Preparations, nor use any proper Measures, for preventing it; and upon those Citizens, who, while it was perpetrating, had no Courage, nor, it seems, Inclination, to prevent it; and who, when it was over, were so faithful to Rebellion and Murder, as to conceal the Authors and Abettors of it.

Sir, when I hear Gentlemen so unanimous in their Detestation of so horrid, so audacious, and so extraordinary a Crime, I am surpriz'd to hear some Gentlemen find fault with any extraordinary Method that can be taken, or devis'd for punishing it. But the Bill now before us is neither an ex-

traordinary nor an unusual Method of Proceeding. It is a Method that has always been taken for punishing Crimes of an extraordinary Nature; and it is a Method so usual, that Examples occur almost in every Session. The Act of Parliament pass'd in the Year 1721, against the *South-Sea* Directors in the Year 1720; the Acts for inflicting Pains and Penalties upon the late Bishop of *Rochester* and his Confederates in Treason; the Act against *Bambridge*, the Deputy-Warden of the *Fleet-Prison*; the Act against the late Directors and Managers of the *Charitable Corporation*, are Examples so fresh in every Gentleman's Memory, that I need not take up your Time with explaining or applying them. Only as to the first and last I must observe, that some Gentlemen were punished for being guilty of Neglect only; and I must likewise observe that some Gentlemen have appeared zealous against this Bill, who were strenuous Advocates for every one of the former.

In order, Sir, to form another Objection against this Bill, a new Doctrine has been broached, which I am likewise not a little surpriz'd at. It has been said, that it would be unjust to involve the Innocent in the same Punishment with the Guilty, which must always be the Case when you punish a Corporation or Community for the Crimes or the Faults of some of its Inhabitants or Members. Does not every Gentleman see, that if this were establish'd as a Maxim, no Punishment could ever be inflict'd, no Censure could ever be pass'd, upon any Corporation or Community whatsoever? Punishments are sometimes design'd as a Terror to others, as well as for punishing the Guilty; and to make that Terror the more effectual for the End intended, which is to prevent Peoples being guilty of such a Crime, it some Times, or in some Cases, becomes necessary, to make some innocent Persons suffer for the Crimes of the Guilty. Is not this the Case with respect to Treason, where the innocent Posterity are made to suffer for the Crimes of the guilty Ancestor, in order to terrify Men the more effectually from being guilty of any treasonable Practices? For the same Reason, the innocent Members of a Community must be sometimes made to suffer for the Crimes of the Guilty; because such an Example will make every Member of every Community more active and vigilant in preventing their fellow Members from being guilty of any Crime, or in discovering the Authors, and bringing them to condign Punishment, after any Crime has been committed. This is a Maxim in Politicks so just and necessary, that we have Multitudes of Examples upon our Journals, where Cities and Corporations have not only been fined, but have been annihilated,

niliated, or stript of their most valuable Rights and Privileges, for Crimes in which it could not be supposed that all the Inhabitants were voluntarily assisting, or any way concerned *.

We have been not only told, Sir, that this Bill is unjust with respect to private Men, by involving the Innocent in the same Punishment with the Guilty; but we have likewise been told, that it is a Breach of the Law of Nations, and an Injustice done to the whole People of *Scotland*. The former Charge I have shewn to be without any Foundation; because it is often necessary for the Preservation and Welfare of Society, to make the Innocent suffer for the Crimes of the Guilty; and now I shall beg leave to examine the latter. There is no Man has a greater Regard for the People of *Scotland* and for the Articles of Union than I have. I shall never give my Consent to any Thing that may seem to be an Injury to the one, or an Infringement of the other. But in the present Case, I can see no Ground for pretending that this Bill imports a Breach of any Article of the Union, or that it will be an Injury to the Whole or any Part of the People of *Scotland*. The Rights and Privileges of the Royal Boroughs of *Scotland* are, 'tis true, secured by the 21st Article of the Treaty of Union; but as the United Kingdom is, by the third Article of the same Treaty, made subject to the same Parliament or legislative Power, a Condition must be supposed to be implied in every Article, for making it liable to such Alterations as the Parliament of *Great Britain* shall afterwards think necessary for the Preservation, or even for the Good of the Whole. Upon this Maxim it certainly was, that the Right of Patronages was restored in *Scotland*, by a Parliament since the Union; tho' there is nothing more firmly and more unalterably established by the Articles of Union, than the Presbyterian Church Government, Religion, Worship, Discipline and Privileges, as they stood established at the Time of the Union. And tho' we were to suppose no such Condition implied in this Article, yet the Security thereby stipulated can relate only to those Rights and Privileges which are essential to the Whole, or to any one of the Royal Boroughs in *Scotland*. It cannot be supposed to mean, that the Parliament of *Great Britain* shall never be able to make the least Alteration or Amendment, with respect to any Right or Privilege, which any one Royal Borough was then in Possession of. And much less can it be supposed to mean, that the Parliament of *Great Britain* shall never have it in its Power to punish, or even to disfranchise, any Royal Borough in *Scotland* for the most

heinous Crime it can be guilty of. This Bill cannot therefore be supposed to be a Breach of any Article of the Union; and as to the People of *Scotland*, it is certainly their Interest, it is what all good Men must desire, to live in Peace and Security; therefore no Step taken, nor any Punishment inflicted, with a View only to prevent Mobs and Riots, can be an Injury to the Whole or any Part of the People of that Country.

As for the City Guard, and the *Netber-Bow* Gate, they are so far from being among the essential Rights and Privileges of the City of *Edinburgh*, that I really look upon them both as Nuisances; and as to the former, it is so far from being an essential Right or Privilege, that we know it was but lately established; it was established since the Revolution; and ever since it was established it has been found to be a great Expence, and of very little Service to the City; so that tho' those two Regulations are put into this Bill by Way of Punishments, I really look upon them as Favours done to that City; because the Taking away of the Guard will free the City of a great Expence; and the laying open the *Netber-Bow* Port will open a free Passage to the King's Troops, to come to the Assistance of the Magistrates when required, which will be a better Defence to the Inhabitants than they have ever yet found in their Guard. As the King's Troops are not to be admitted to keep Guard in the City, as they are not to enter it but when required by the Magistrates, they cannot, 'tis true, defend them against House-Breakers, Street-Robbers, or little Insults in the Streets; but for this Purpose they may keep Watch and Ward as formerly, or they may appoint Watchmen, as we have in the Cities of *London* and *Westminster*. And with respect to the Revenue of the City, it cannot now be collected without keeping Officers at the Gates, and by them the City Revenue may be collected, and Smuggling prevented, as well when the Gates are open, as when they are shut.

I am, indeed, surprized to hear it said, Sir, that neither the *Netber-Bow* Gate nor the City Guard were of any Service to the late Tumult, or contributed any Way to encourage it. The Mob probably did not know how easily a Gate might be blown open by that warlike Engine called a *Petard*, nor do I know if the King's Troops in the *Cannon-gate* were furnished with any such; therefore we must suppose the Mob put great Confidence in their being able to shut the Gates, in order to prevent the Troops from entering; and their Attack upon the Guard proceeded more from a View of Seizing upon the Soldiers Arms, than from any Fear of them; in

* Many of these Precedents were quoted, but we have not Room to repeat them.

which they had most surprizing Success: From which, I think, I may justly conclude, that the City Gates contributed greatly to encourage the Mob to undertake so bold an Attempt, and that the City Guard was of great Service to them in the Execution of it.

I shall grant, Sir, a Barricade may be soon made by a numerous Mob, even in a wide Street, especially if they have concerted their Plan so well as this Mob seems to have done; but no Barricade can be so soon made as a Gate may be shut, and the Shutting of a Gate may protect them till they have made their Barricade; which this Mob would certainly have done, had they thought how easily a Gate might be blown up, or had they been under the least Suspicion that the regular Troops would have been sent for in a regular Manner. I shall likewise grant that his Majesty, if he pleases, may lodge as many Troops in the Castle of *Edinburgh*, as it can conveniently contain, and may give such Orders to those Troops as he thinks proper and legal; nay, we may, I believe, even address his Majesty for that Purpose; tho' I do not know if it would be quite so regular, because it would be some Sort of Incroachment upon that Part of the Prerogative, by which his Majesty must always have the absolute Command over his Army. But when we are by a Bill to provide for the Safety of a City, we are not to consider what his Majesty may do, or what he may do upon an Address from this House; because tho' it should now be done, it may hereafter be neglected; and, I hope, no Gentleman supposes, we ought to put a Clause in this Bill, for obliging his Majesty to lodge a Regiment of his Troops always in the Castle of *Edinburgh*, with Orders to leave their Garrison as often as the Magistrates of *Edinburgh* shall require.

That the City of *Edinburgh* shewed great Fidelity and Attachment to their Sovereign in the Year 1715, I shall be far from disputing; but, Sir, it was their Duty to do so; it was their Interest; they would have suffered irreparably if they had done otherwise; they would have betrayed their own Liberties and Properties, as well as those of the whole Nation; therefore they cannot, from their Services at that Time, plead a full Pardon for a most heinous Offence lately committed: They may from thence plead for a Mitigation of the Punishment they deserve; and I am sure there is no Punishment in this Bill equal to what such a high Insult upon the Crown ought to meet with. But whatever Stead their Guard or their Gates might stand them in upon that Occasion, surely a Regiment of his Majesty's Troops will always stand them in better Stead than their Guard; and if a Barricade be as good a Defence as a Gate, even in Case of a Rebellion, they can be in no Danger from having one of their

Gates laid open. For my Part, I am apt to think neither their Guard nor their Gates would at that Time have defended them from the Rebels, if his Majesty's Troops had not marched speedily to their Assistance; and therefore, that City, as well as the whole Nation, must own their Obligations to the noble Duke, who then commanded at *Stirling*; who, notwithstanding his having so small a Number of Troops under his Command, notwithstanding his being attacked by two Armies of Rebels at once, one of them much superior, and the other very near equal to him in Number, yet managed so much like a brave and expert Commander, as to secure both the Capital of the Kingdom of *Scotland*, and the important Pass at *Stirling*, against all the Designs and Stratagems of the Enemy.

With respect to the Provost, Sir, 'tis true, the Punishment prescribed by the Bill might be made very expensive and inconvenient to him, if we had the Misfortune to be under a severe or revengeful Administration. But this Misfortune cannot happen to us during his present Majesty's Reign; therefore we need not be so cautious of putting it in the Power of the Crown to aggravate the Punishment: Nor ought this to be a Precedent to any future Parliament, if they have the least Ground to suspect the Power to be granted would be made a cruel Use of; but I am far from thinking such a Power could be legally made such an Use of as has been represented. The Prisoner may, indeed, be removed from one Prison to another, as often as the Secretary of State shall direct; but I do not think he could be loaded with Irons, unless he should attempt to make his Escape; nor do I think he could be denied the Use of Pen, Ink, and Paper, nor could his Friends be denied Access to him; so that it would always be in his Power to let his Friends know where he was going; and he might see them as often as he had a Mind.

Thus, Sir, if the Charge against the Provost and Citizens of *Edinburgh* be true, I think, I have shewn, there is nothing extraordinary in this Method of Proceeding; there is no Injustice either private or publick in the Bill, nor can it be looked on as any Infringement of the Articles of Union; and I have likewise, I think, shewn, there is no Severity in any of the Punishments that are to be inflicted, nor any Thing that appears in the least ridiculous; but I am sure it would be very ridiculous to pass a Bill with such a Preamble, a Preamble which must make every Reader expect the highest Pains and Penalties to follow; and yet to inflict no Pain or Penalty by that Bill, except only the rendering one Gentleman incapable of holding any Office or Place of Magistracy. Of such a Bill it might be properly said, *Parturiunt Montes*

Montes, &c. Therefore if the Charge be true, I hope every one of the Amendments will be disagreed to.

And now, Sir, give me Leave to examine the Truth of the Charge, which I shall consider distinctly according to the three Periods that have been mentioned. As to the Behaviour of the Provost and other Magistrates of *Edinburgh*, before the Tumult happened: 'Tis true, we have no positive Proof of the Provost's having been apprized of the Mob's intending to execute their Purpose on the *Tuesday* Night; but if he was not, it was certainly owing to his supine Indolence and Inattention; for it has been proved, that *Tuesday* Night was generally talked of, as the Time appointed. *Baily* and *Din* are both positive as to this Fact; and by an authentick Copy of an Examination upon Oath, taken before an honourable and learned Gentleman I have in my Eye, after that Tumult, it appears that the Deponent swore to this Effect, or rather in these Words, That on the *Thursday* or *Friday* before that Tumult happened, a Man came into his Master's Shop, and informed both him and his Fellow-Servant, that *Tuesday*, then, next was the Day appointed for revenging innocent Blood, and that he hoped they, the Deponent and his Fellow-Servant, would not fail to attend, and assist those who were to hang the bloody Murderer *Porteous*, by ten o'Clock at Night, upon the Signal given, which was to be a Ruff of a Drum. From hence it appears, that if the Provost and Magistrates of *Edinburgh* were ignorant of the Design's being intended to be executed on the *Tuesday* Night, they were very little inquisitive or concerned about the Peace and Welfare of their City.

But suppose, Sir, they heard nothing of its being intended to be executed before *Wednesday*, did they take any Measures to prevent it on that Day? They say they had resolved to do great Things; but can it be pretended they had actually done any Thing? Even on the *Tuesday* Night they had given no Orders, nor had they distributed Ammunition to their own Guard. Considering the Report that was spread, considering the violent Malice the Populace shewed against *Porteous* at his Trial; surely the Magistrates had as great Reason to call the regular Troops to their Assistance at that Time, as at the Execution of *Wilson*; they had no other Reason for calling them at that Time but a general Rumour; they had no certain Information of an intended Resent. As they had some Information of a Design to murder *Porteous* on the *Wednesday*, they ought certainly to have begun to provide against it on *Tuesday* in the Afternoon. Their whole Guard should have begun at that Time to be upon Duty, and a Detachment of the regular Troops ought

certainly to have been called in on the *Tuesday* at Noon, and kept there till the *Thursday* at Noon. But there were other Methods by which they might have prevented the Design, without putting themselves to this Trouble. They might have removed *Porteous* to the Castle, or to the *Cannon-Gate* Prison, in both which Places he would have been safe against the utmost Efforts of the Mob. If the Magistrates had but placed a small Detachment of their Guard in the Tolbooth; or had they placed a Detachment in the Justiciary Room, which commands the Prison Gate, the Mob could not have forced the Gate, they would have been exposed to a continual Fire, by which they must have been killed as fast as they approached. In short, Sir, so many Methods might have been taken for preventing this Tumult and Murder, so many easy and obvious Means were neglected, that I must say I have some Suspicion, the Provost, or some of those who had the Guidance of him, were fully apprized of this seditious Design, and that they were resolved to connive at it, or at least not to take any effectual Means for preventing it.

Then, Sir, as to their Behaviour during the Time of the Riot: The Provost must have known, at least he ought to have suspected, a verbal Message would not be a sufficient Authority for the Commanding Officer to march to his Assistance. There was no Fault in sending the Hon. Gentleman I have in my Eye with a verbal Message to the General; and his undertaking such a dangerous and difficult Errand, shewed his Zeal for the Honour of the Crown and the Service of his Country. But the Provost ought not to have rested satisfied with this; as soon as he returned to the Tavern, he ought to have wrote a Letter to the General, positively requiring his Assistance, and empowering him to use whatever Means he should think proper for forcing his Way into the Town: Of this Letter he ought to have wrote half a Dozen of Copies, and to have sent off a separate Messenger with each; in order that if one failed the other might make his Way good; for there were several Ways of getting out of the Town, besides going out at the Gates; and in many Places a Man may, with very little Assistance, get out over the City Walls.

But, Sir, I should be glad to know, why the Provost did not send for Assistance from the Castle; the Commanding Officer has told us he stood ready prepared with the best Part of his Garrison, and with proper Instruments for quelling a Mob, and would have marched to the Assistance of the Magistrates, if they had sent for him. This Assistance was much nearer than that in the *Cannon-Gate*, and no Gates or Barricades to prevent a Messenger's getting thither. The Neg-

Neglecting to send for this Assistance I must look on as a supine, if not a designed Neglect; and the Neglecting to read the Proclamation I must look on as another Piece of Neglect of the same Nature; for tho' the Troops had come from the *Cannon-Gate*, the Proclamation not having been read before-hand, the Troops must have remained inactive for an Hour after their Arrival, and in that Time the Mob might have executed their bloody Purpose. We have been told of the brave Efforts the Provost, and those with him, made to quell the Mob; but one of the Witnesses, I mean *Stewart*, has given us a quite different Account; for he has told us that he and *three or four* more disarmed some of the Mob, and with those very Arms drove them to some Distance; and that if they had been vigorously supported by the Provost and his Company, they might probably have drove the Mob quite away from the Prison. From hence, I suppose, the Provost's Efforts to suppress the Mob were not very strenuous; nor, indeed, does it seem probable, since no dangerous Wound was received by any one of either of the Parties engaged.

Lastly, Sir, Let us consider the Behaviour of the Provost and Magistrates after the Tumult. We have been told, he sent out Persons to intermix with the Mob, in order to discover the Rioters; but what was the Consequence? One of those very Persons came back, and said he knew one of them; and accordingly, it seems, told his Name: But was the Man thus named ever taken up or prosecuted? I should be glad to know what is become of him; for if he has not made his Escape, surely he ought to have been apprehended and prosecuted long before this Time. Then after the Murder was actually committed, and the Mob generally dispersed, we have been told that some of the Magistrates went and saw several of the Rioters then standing about the murdered Person, and that they actually seized one of them; but what then? They let him go again, upon this Pretence, that they had no Prison to put him in. Had not they their Guard-Room? Might not they have put him into a Chamber in any private House, with two or three City Officers to guard him? Might not they have sent him to the Castle? Might not they have sent him to the *Cannon-Gate* Prison or Guard-Room? Sir, there were many Ways to have secured him, if those who seized him had had an unfeigned Inclination to do so.

Now, Sir, as to the Behaviour of the Citizens at those several Periods. As the Report was common among them before the Tumult happened; if all of them had not favoured the Design, some of them would certainly have been at the Pains to trace it a little, and would have warned the Magistrates

of their Danger. When Journeymen and Servants were so publicly invited to assist, and were informed of the Day, the Hour, and the Signal, we can hardly suppose their Masters remained utterly ignorant of the Design; therefore we must suppose it was favoured by Masters as well as Servants. Then during the Tumult, we have been told, there were not above 40 or 50 actually concerned in the Murder, and that there were at least 1500, some say 4 or 5000, in the Streets; most of these must have been Citizens, and were not they criminally passive, to allow such a Handful of Men to commit such a horrid Murder in the Heart of their City, without the least Opposition? Were they not still more criminal for not joining their Provost and Magistrates, when they saw them in the Streets, endeavouring to suppress the Tumult? And supposing all the principal Actors were Country-Fellows, it can hardly be supposed but some of them must have been known by some of the vast Multitudes of Citizens that were in the Streets. But those Citizens were afterwards as faithful in concealing the Murderers, as they had before been passive in allowing them to commit the Murder.

From what I have said, Sir, I think it will appear, the Charge is true in every Article; therefore I must be of Opinion, we ought to pass the Bill as it is; but if you agree to the *three* first Amendments proposed, if you leave the City their Gate and their Guard; you must agree to the 4th Amendment proposed; you must subject the City to a Fine at least: Surely, you would not pass a Bill, the Preamble of which lays such a heavy Charge upon the Citizens of *Edinburgh*, without inflicting any one Punishment upon those Citizens. The subjecting them to a Fine can no Way be supposed to be a Breach of the Articles of Union, or any Way unjust. There are many Examples of this Sort of Justice in *England*. A Township is to be amerced, if they suffer a Murderer to escape. The Hundred makes good the Damage to a Person robbed within the Hundred; and by a late Statute, a City, Town, or Hundred, may be obliged to make good the Damage, if a Church, Chapel, or Meeting-House, be riotously demolished. Even in *Scotland*, we know that the Magistrates of *Glasgow* were all carried Prisoners to *Edinburgh*, and the City afterwards fined in a very large Sum, by Act of Parliament, on Account of a Riot, which happened in that City. There cannot therefore be any Thing unjust or extraordinary in subjecting the City of *Edinburgh* to a Fine; and considering the Atrociousness of the Crime, I am sure the Fine proposed cannot be said to be too much.

As to any Apprehensions Gentlemen may pretend to have of the Resentment of the

Scots, in Case we should pass this Bill into a Law, I cannot think there is the least Ground for them. That Nation smarted sufficiently for their Rebellion in the Year 1715, therefore, I believe, they will not be very forward to renew any such Attempt, or to have Recourse to Arms, against their lawful Sovereign, however they may unjustly imagine themselves injured, lest the Remedy, as they found it then, should prove much worse than the Disease. But if we have any Reason to apprehend any Thing from the *Scots* at this Time, and upon this Account, it is with me a strong Argument for passing the Bill without any Amendment; because I am sure, they never will rebel on this Account, unless they are resolved to rebel at any Rate; and if that be their Resolution, I should much rather wish, they would begin it now, and on this Account, than that they should begin it on an Account which might procure them many more Friends in *England*, or at a Time when we might not perhaps be in so good a Condition to defend ourselves.

The Reply was to the following Effect, viz.

I shall grant, Sir, that where a Magistrate by any egregious and supine Negligence, allows a Crime to be committed, which he may easily, and ought to have prevented, he might be considered as some Way guilty of that very Crime; but surely, when a Magistrate does all he could, when he uses every Expedient any of those about him could suggest, for preventing the Committing of any Crime, he ought not to be deemed guilty of that Crime in any Degree, because it afterwards appears, that he might have used other Measures, by which the Committing of the Crime might have been prevented; for the Deficiency of human Prudence and Foresight appears in nothing more than this, that there is hardly any Misfortune happens to us, but what upon Reflection we find might have been easily prevented, if we had foreseen all the Circumstances before they happened; as clearly as we see them after they have happened. The unfortunate Person, whose Conduct is now under our Consideration, I shall not suppose to be one of the wisest or most ready-witted Men in the World; but I am convinced there are many now find Fault with his Conduct, who would have been guilty of the same Mistakes, and perhaps worse, if they had been at that Time in his Situation.

As for the Crime that was then committed, I shall most readily join with other Gentlemen in declaring my Detestation of all those that were concerned in it; but I am surprized to hear Gentlemen represent it as one of the most cruel, that was ever committed by the People of any Country. In all Countries, Sir, where the legal Punishment is not proportioned to the Heinousness of the Offence,

the People are apt sometimes to interpose: Where the Punishment is too severe, they are apt, as often as they can, to prevent the Effect of legal Justice; but when the legal Punishment is not so severe a Punishment as the Crime deserves to meet with, they in that Case sometimes take Occasion to administer what may be called popular Justice. Of this we have had lately several Examples in *England*, especially with respect to the Crime of Perjury. Within my Memory, there have been 2 or 3 Men murdered upon the Pillory by the Mob of *Westminster*; and yet I have never heard it said that the People of *England* were of a cruel Disposition, nor was there ever any Bill of Pains and Penalties brought into Parliament against the City and Liberty of *Westminster*, for neglecting to prevent such audacious and cruel Murders. In such Cases the People may be said to bring the Criminal before the Tribunal, not of their Inhumanity, but of their Justice; and tho' they sometimes punish with Death, yet they cannot truly be said to embue their Hands in the Blood of a Criminal, who ought to have been hanged by the Law, if the Punishment had been proportioned to the Crime.

When I say this, Sir, I would not have it thought that I approve of any of the Murders that have in this Manner been committed in *Westminster*. No, Sir, I think the Distribution of popular Justice, as well as Mercy, ought in all Cases to be prevented; but how? By proportioning the Punishment in all Cases to the Crime, by shewing Mercy to all that deserve it, and to none that do not. I likewise would not have it thought that I approve of the Murder of *Porteous*, when I say what I am going to say of that unlucky Criminal. But some Gentlemen have talked so much of the Cruelty and Barbarity of his Murder, that they seem to have quite forgot the Murders he had committed, and for which he was condemned by the Laws of his Country. As this may bias Gentlemen a little in their Opinion with respect to this Bill, I must beg leave to explain that Matter a little. Before the Riot-Act, Sir, the Laws of *Scotland* were so far from allowing the Use of Fire-Arms for quelling Riots, that in the Act of King *James VI.* of *Scotland* and *Ist* of *England*, which indemnifies the Magistrates of *Edinburgh* and their Assistants, if any Person should be killed by them in quelling a Riot, there is this express Provision, providing it be with long Weapons, and not by shooting Haquebuts, or the like. By Haquebuts is there meant the Fire-Arms then usually made use of. Now by the Riot-Act how does this Case stand? If any Man fires, or gives Orders to fire, upon a Mob before the Proclamation is read, or before the Hour after reading is elapsed, he certainly must be tried by the Law, as it stood before that Act was made; and

and in Scotland the Jury must always bring it in, Murder, or *Se Defendendo*; or if they bring it in special, the Judges must determine it to be the one or the other; there being no such Thing as *Manslaughter* in that Country. Even in England, I believe, the Jury would always bring it in, Murder, if the Person who fired, or gave Orders to fire, was under no great Necessity of Firing; because no Man can be supposed to fire deliberately, or to give deliberate Orders to fire upon a Crowd of People, without a malicious Intention; unless he be brought under a Necessity to fire, either in Defence of his own Life, or for the Sake of executing that Duty which the Law commands him to execute; and as neither of these was the Case of *Porteous* at the Execution of *Wilson*, therefore, if he either fired or gave Orders to fire, which the Jury had found, and the People believed he had, he was certainly guilty of all the Murders then committed. So that whatever Neglect the Provost or Magistrates of *Edinburgh* were guilty of, I hope it will not be thought that *Porteous* was altogether innocent; at least he certainly was not so in the Eyes of the People.

There are, without Doubt, many Precedents of the Parliament's proceeding by Bill against real Criminals or notorious Offenders; all the Precedents that have been mentioned were for punishing most flagrant Crimes; but this is, I believe, the first Bill of Pains and Penalties that was ever brought in against Men who had been guilty of no Crime, nor, I think, of any very gross Negligence or Oversight. There are likewise many Precedents of grievous Punishments inflicted upon Communities; but most of them are such as I hope will never be followed in this Reign; for I shall always think severe Punishments a bad Method to prevent Crimes: It is the Method usually made use of under tyrannical Governments; therefore, I hope, I shall never see it established or practised in this Kingdom. For this Reason I shall always be against punishing the Innocent for the Sake of the Guilty; because I think all the Ends of a good Government may be answered without such Severity, and I shall never be for any of those Measures, that are proper for answering the Ends of a bad.

The Articles of Union, Sir, are Fundamentals which ought not to be altered, nor can be altered, even by a *British* Parliament, without the almost unanimous Consent of both Nations. Some of the Articles, indeed, are by an express Clause in the Article itself made alterable by the Parliament of *Great Britain*; but the 21st Article is none of those; and what makes that Article still more unalterable, as I had the Honour to be a Member of that *Scotch* Parliament which made the Union, I remember this very Article was proposed to be made alterable by the Parliament of *Great Britain*; a Motion was

made for that Purpose, and after a long Debate, the Motion was, upon a Division, rejected by a great Majority. If the People of Scotland in general should by Petitions desire an Alteration of any Article, and the People of England should not oppose it, the Parliament might then certainly take it into their Consideration, and might do as they thought fit. This was the Case, or pretended to be the Case, with respect to Patronages; for, 'tis well known, there was at that Time a very considerable Part of Scotland who favoured that Bill, and the Majority of the *Scotch* Members in both Houses were for it; which is very far from being the Case of the Bill now before us. But besides, Sir, 'tis a Mistake to say, the Restoring of Patronages was an Infringement of any Article of the Union; for that Article which secures the *Presbyterian* Church Government, secures it as established by the 5th Act of the second Session of the first Parliament of King *William* and Queen *Mary*, and by the Declaration of the Estates, containing the Claim of Right, dated April 11, 1689; both which are expressly recited in the Preamble of that Article; and since Patronages were not taken away either by that Act, or by the Claim of Right; since they were taken away by a subsequent Act, I mean the 23d Act of the same Session; therefore it cannot be said that the Method of presenting Ministers in Scotland by a popular Election, was established by any Article of the Union; consequently the *British* Parliament had a full Power to restore Patronages, whenever they had a Mind.

As Watching and Warding in *Edinburgh* has been taken away by Act of Parliament, they cannot return to it, nor can they appoint Watchmen, without an Act of Parliament; so that if you take away their Guard, you leave them quite defenceless against House-breakers, Street-Robbers, and dissolute Fellows: And as to the Collecting their Revenue, or preventing Smuggling, surely one Officer, with a Gate shut in the Night-Time, may do both more effectually, than half a Dozen can do without any Gate. Then in case of a Rebellion, such as that in the Year 1715, the Government may perhaps have so much Occasion for their Forces elsewhere, as not to be able to spare a Regiment either to be quartered in the Cannon-Gate or Castle, which was really the Case at that Time. 'Tis true, the City of *Edinburgh* did nothing then but what was both their Duty and their Interest; they did nothing but what they thought was both their Duty and their Interest; but if ever such a Thing should happen again, this Bill may cause them to look upon both their Duty and Interest as engaged on the other Side of the Question; for I am sure no Gentlemen in this House will preach up passive Obedience to that or any other Part of the Nation.

With

With respect, Sir, to the Year's Imprisonment to be inflicted on the Provost, it seems to be allowed, that it would be too severe, if the Government should please to make it so; but say Gentlemen, we are sure this Government will not; and therefore it can be no Rule to a future Parliament, when we happen to be under a rigorous Administration. Sir, can we suppose any future Parliament will tell their Administration so? Can we suppose that any Gentleman will rise up in this House and tell a Prime Minister, *What such a Parliament did can be no Rule for us, because the Nation was then under a mild Government, whereas we are now under a cruel one.* I am much afraid, Sir, I shall never hear such a free Speech in Parliament, even should there be Occasion for it, which I hope there never will. The worst Precedents are often made under the best of Kings; and being once made, it becomes dangerous not to allow them as Precedents under the Reign of a bad one; when they are certainly made a wrong use of, therefore the good Opinion some of us have of the present Administration, will not, I hope, lead us into the Making a Precedent, which may hereafter be made a bad Use of; and surely the Preamble of the Bill can be no Reason for our doing a wrong Thing, because we may alter it at pleasure.

Now, Sir, I must beg leave to answer some of those Objections that have been made to the Behaviour of the Provost and Citizens, in order to fix upon them, what, 'tis pretended, they are to be punished for, a criminal Neglect. As to Mr. Baile and Mr. Din, I think it is a sufficient Objection to their Evidence, that neither of them ever went near the Provost to acquaint him with what they had heard; for if they believed there was any Ground for what they heard, they were in Duty bound to do so. But besides this, the Character of one of them has been made sufficiently known to you, by some of your own Members. We have therefore much the strongest Reason to believe the general Report was for the *Wednesday*; we have not the least Proof of the Provost's having ever heard that any other Day was appointed; and it was most natural to suppose *Wednesday* would be the Day, if any such Thing was intended, because the Mob could, not till then, be certain that any Reprieve had been granted. Supposing then *Wednesday* to be the only Day the Provost had ever heard of, he had taken sufficient Resolutions for that Day, considering the Report was represented to him by every Body as an idle Report; and it would have been imprudent to have issued any Orders in pursuance of those Resolutions, before *Tuesday* Night; because it would have been giving Notice to the Mob of what was intended against them, which might have made them resolve upon an immediate Execution of their

Design. As for the other Precautions which, 'tis pretended, the Provost might have taken for the Security of *Porteous*, they were impossible, or very imprudent. To remove *Porteous* was what the Provost could not do, he was by his Sentence to be kept in that Prison, and carried from thence to the Place of Execution; and to plant Detachments of the Guard in the Prison, and the Justiciary Room, would have been very imprudent; because it would have weakened the Guard, by which Means the Mob might the more easily have got Possession of the Guard-Room and Town; which, if they had once done, they would certainly have set fire both to the Prison and the Justiciary Room, if the Soldiers had fired, and killed any one of them.

As the Provost was no military Man, as he knew not what express Instructions General *Moyle* had, he had good Reason to believe, and certainly did believe, that a verbal Message at such a Conjunction, delivered by a Gentleman of such Credit and Character, would have been sufficient. This prevented him from desiring any of his Friends to run the Risk of carrying a written Order, and likewise prevented his making any Application to the Commandant in the Castle; to whom he had never applied upon any former Occasion, nor did he know that he could upon any Pretence leave his Garrison. As for the Attempts made by the Provost to quell the Mob, all the Witnesses agree he did as much as a Man of Prudence and Courage ought; which Testimony cannot, I think, be in the least impeached by *Stewart's* Evidence, considering how he prevaricated in several Circumstances, and the Improbability of what he says; and as for his reading the Proclamation, it was of no Use, because if the Troops had come to his Assistance, there would have been no Occasion for firing, or they would have had a good Pretence for firing before they got into the Town; for if none were concerned in the Tumult but such as then appeared active in it, they would have disappeared upon the first Approach of the Troops; but if most of those who were in the Streets were actually engaged to assist in case of Need, as soon as they heard of the Troops beginning to march, the Town Magazine, and every Gun-Smith's, Sword-Cutler's, and Powder-Shop in Town would have been broke open and stript in an Instant; and the Troops would certainly have had a Fire made upon them from the Mob, upon their first Approach to the *Netter-Bow*; for the Misfortune of the Mobs in Scotland generally is, that they do not content themselves with Clubs, Stones, and Brick-bats, but immediately fly to Arms, and seize upon them wherever they can find them.

But above all I am surprized, Sir, to hear the Conduct of the Lord Provost of *Edinburgh*, after the Tumult, found fault with, when

when we have the Testimonies of two Hon. and learned Gentlemen of this House in his Favour. We have been told one of those Persons he sent out to make Discoveries, returned and said, he believed he knew one of the Rioters. Yes, he did so; but have not we been told that, that very Person afterwards refused to confirm what he had said upon Oath? And as to the Person that was seized next Morning and afterwards discharged, if there was any Fault in that, it was none of the Provost's, for he was not there, nor was any Way consulted in the Affair. But the Truth is, there was no Pretence for detaining that Person: Those who seized him had no Ground of Suspicion against him, nor could they say they had seen him guilty of an illegal Action; unless staring upon the Body of a Man hanging upon a Sign-Post be a Crime by the Law of Scotland, which I am told it is not. In short, Sir, the Provost of *Edinburgh* seems to be like an unfortunate General, who has lost a Battle by the Fault of one of his Under-Officers: That very Officer endeavours to find fault with his Conduct, and to shew how he might have prevented the Defeat by a different Disposition, or by doing such and such Things, which it is always easy to shew, and to give plausible Reasons for, after the Action is over. But upon such Occasions, if a Man does all a prudent Man could do, if he neglects no good Measure suggested to him, surely he is not to answer for the Success. Bad Success may be a Reason for condemning a Man in a *Turkish* Divan, but never will, I hope, in a *British* Parliament. If it ever should, we may begin with Disabilities and Imprisonments, but we shall come at last to Decollation or the Bow-String.

As for the Behaviour of the Citizens before and after the Tumult, there is not the least Proof against them, there is nothing but Conjecture; and tho' it may be laid down as a Rule in this House, that a Community may be punished for the Fault of some of its Members, yet, I hope, Sir, this will never be done upon Conjectures only. Then as to the Behaviour of the Citizens during the Riot, there is one *Scotch* Act of Parliament, which will justify their Conduct against every Thing that has been said against it. I mean an Act passed in the ninth Parliament of Queen Mary of Scotland, intituled, *An Act for Staunching Tumults within Boroughs*. By which it is enacted, That none of the Subjects shall convene or assemble within any Borough for suppressing a Tumult, or arm themselves with any warlike Arms for that Purpose, without Orders from the Magistrate; so that the Citizens of *Edinburgh*, tho' assembled in the Streets, could not by Law attempt to suppress the Tumult, or to arm themselves for that Purpose, without Orders from the Pro-

vost; and why the Provost could give no such Orders has been already explained.

Now, Sir, as to the Fine that has been proposed, I am sure it can be justified by no Precedent either in *England* or *Scotland*. The Amercing of a Hundred, if they allow a Murderer to escape, or obliging the Hundred to make good the Damage in Case of a Robbery within it, takes Place only if the Escape or Robbery was in the Day-Time; this Murder at *Edinburgh* was in the Night-Time: The obliging a City, Town, or Hundred, to make good the Damage, when a Meeting-House is riotously pulled down, stands enacted by that famous Law called the Riot-Act, which is a Law that I hope will never be extended either by Statute or Practice. And the Money paid by the City of *Glasgow*, was not by Way of Fine, but by Way of Damages, according to a Bill of Damages proved in Parliament by the Gentleman who suffered: To which I must add, that that Tumult at *Glasgow*, I believe, happened in the Day-Time, and therefore was more heinous with respect to the City of *Glasgow*, than this that happened at *Edinburgh*. Surely it cannot be said that this 2000*l.* is to be paid by Way of Damages to the Relief of *Pertous*; for the City of *Edinburgh* has already made her a full Satisfaction on that Account.

Before I have done, Sir, I must declare, that in this whole Affair of the Tumult at *Edinburgh*, I think the Commanding Officer of his Majesty's Troops acted both like a wise Man and a good Officer. I am sorry it should ever be necessary to call his Majesty's Troops to the Quelling of any Riot: I am sure they were never designed for that Purpose: It is a Service by which they never can gain any Honour; and it is a Service which has been for many Ages sufficiently performed in *Britain* by the Civil Magistrate, without the Assistance of regular Troops; therefore no Officer ought ever to lead his Troops out to any such Service, without the most express and explicit Orders in Writing from that Civil Magistrate, whose Orders he is by his Instructions obliged to obey; in order that that Civil Magistrate, and not he, or the Troops under his Command, may be made to answer for any Thing that may happen to be done contrary to Law. In this Case therefore, the Commanding Officer was greatly to be commended for refusing a verbal Message, and yet the Provost is no Way to blame, because this is the first Time the Question has come in dispute, and therefore he might at that Time believe, that a verbal Message would be sufficient.

Sir, as I am no *Scotchman*, as I never was in that Country, I may be allowed to add a few Words in favour of it. I am sorry any Thing should ever happen in Parliament, that should give the least Occasion to make any new

new Distinctions between the Nations of *England* and *Scotland*, which has been one of the unlucky Consequences of bringing in such a Bill; I wish it may be the only one. I am sure, if ever a Nation deserved good Usage from another, the *Scots* deserve it from us. At the Time of the Union, and in that Treaty, they trusted their All to our Honour, our Justice, and our good Nature. They made Terms, 'tis true, but they trusted the Performance of those Terms entirely to our Honour; because they reserved to themselves no Power, no legal Power at least, to compel a Performance. For this Reason I shall always be extremely cautious of doing any Thing, or giving my Assent to any Thing, that may be thought to be a Piece of Injustice or Partiality even by the *Scots* themselves. I should be grieved to see my Countrymen taking Advantage of the Superiority of their Numbers in both Houses of Parliament, in order to cram any Thing down the Throats of the People of *Scotland*; and therefore, whatever Proposition may be made in Parliament, relating to *Scotland*, its being so unanimously opposed by the whole *Scotch* Members, as this has been, will always with me be a very strong Reason for voting against it.

Some Gentlemen seem to have very little Apprehensions from any Resentment the *Scots* can shew; but if by Injustice and Oppression we should unite that whole Nation against us, they may come to make us feel their Resentment as they have often done before. In such a Case we are not to trust to the Superiority of our Power. In *Edward* 1st's Time our Power was at least as much superior as it is at present. *Edward*, by Stratagem or otherwise, got the greatest Part of *Scotland* to submit to him; and if they had met with civil and just Treatment, that Submission might have continued: But they were oppressed, and that Oppression raised such a Spirit among the People, that a private Gentleman, *Sir William Wallace*, opposed with Success for many Years the whole Power of *England*, and I may add, of many of the Nobles of *Scotland*. 'Tis true, that Gentleman was at least infamously betrayed by some of his own Countrymen, and was executed at *London*; but what was that to the Purpose? it did not allay or abate the Spirit of the People; *Sir William* did gloriously in the Cause of his Country, and his Countrymen found a new Leader in King *Edward*'s own Court, who restored them to their Liberties and Independency; for a brave and desperate People will always find a Leader, when a favourable Opportunity offers for calling them to Arms.

We are not to form an Idea of what we have to apprehend from the Resentment of the People of *Scotland*, when all united together, from what happened in the Year 1715. We know there was but a small Part

of that People engaged in that Rebellion; and small as it was, if the Promises that had been made to them by their Friends in *England*, had been performed, I am afraid they would have shook, if not overturned the *British* Throne. They had at that Time neither a Leader experienc'd in War, nor Friends that could give them any Assistance. Accidents may, if Occasion offers, furnish them with the former, and Experience will make them look out for such Friends as they may depend on. For this they cannot be at a Loss: We know how many ancient Leagues have been between *France* and *Scotland*: We know what Honours and Privileges the *Scots* formerly enjoyed in that Country: We know what Respect and Esteem they still meet with, and deservedly meet with, in that Country. They have more than once greatly contributed to prevent that Country's being conquered by *England*; and if we should reduce them to the fatal Necessity of submitting to the one, or of being oppressed by the other, they may hereafter contribute towards *England*'s being conquered by *France*.

We are now by the Union made one and the same People: While we continue so, as we are an Island, as we are in some Manner a World by ourselves, we may, by good Management, give Laws to the World; but if we should revive our old Distinctions and Animosities, we shall expose ourselves to be not only invaded and insulted, but perhaps conquered, by our Neighbours upon the Continent. In Case of any such Misfortune, the People of *England* will always be the greatest Sufferers, as they have always heretofore been; because, as we enjoy the most fertile and best Part of the Island, the Conquerors will settle here, and will rather court the Friendship, than be at the Pains to conquer the Country of the People of *Scotland*. If Gentlemen would consider this, I am sure they would avoid every Thing that might in the least tend towards reviving the Distinction and Animosity that subsisted so long, and so much to the Detriment of each, between the People of the Southern and Northern Parts of this Island; and as this must be the certain Consequence of the Bill now before us, I wish it had never been mentioned, I am sure it ought not to be passed.

After having thus put my own Countrymen in Mind of their Interest, of their Duty, I must beg leave to put the People of *Scotland* in Mind, that it is their Interest, as well as Duty, to preserve the ancient and happy Constitution of both Kingdoms. If they have a Mind the Articles of Union should be observed, if they have a Mind the Interest of their Country should be regarded, they must oppose all Measures which may render the *British* Parliament entirely dependent upon the *British* Court. If we should ever fall under

under such a Misfortune, that a *British* King or a *British* Prime-Minister should have it in his Power to issue his Orders to his Parliament, and that these Orders should for selfish Ends be blindly obeyed by a Majority in each House of Parliament; I say, if ever we should fall under such a Misfortune, the People of *Scotland* must expect, the Articles of Union will be no more regarded than the fundamental Maxims of the *British* Constitution: Both will be often sacrificed to the Whim of a Court, or to the Safety, the Ambition, or the Revenge of a Court Favourite; but if ever such a Case should happen, which God forbid! I hope the People of *Scotland* will impute nothing that may then happen to them, to the injustice or Ill-Nature of the People of *England*; but to that which must then be the Misfortune of both, the Ill-luck of being subject to a whimsical Court, or a revengeful Court-Favourite.

Having thus given the Substance of what was said for and against the Amendments proposed to this Bill, as well as the Bill itself, as fully as we could possibly spare Room for, we shall now acquaint our Readers, that the principal Speakers for the Bill, in all the Debates that happened in the House of Lords, were, the Lord Chancellor, the Duke of Norfolk, the Earl of Arundel, the Earl of Sandwich, the Earl of Arundel, the Lord Down, and

the Lord Lisle; and those against the Bill were, the Duke of Arundel, the Duke of Arundel, the Earl of Cardigan, and the Earl of Farnham. In the House of Commons, the principal Speakers for the Bill were, Sir Robert Walpole, Sir William Temple, Thomas Warton, Esq; General Wadsworth, Mr. Aylmer, Mr. Saurin, Mr. Saurin Skelton, and Henry Fox, Esq; and those against the Bill were, Sir William Wadsworth, Sir John Bland, William Saurin, Esq; the Lord Pembroke, Almoner Home, Esq; the Lord Gough, the Lord Cary, Daniel Fawcett, Esq; James Eden, Esq; Charles Aylmer, Esq; Patrick Lisle, Esq; and James Oglethorpe, Esq;

We have now given some Account of all the very remarkable Debates that happened in last Session; therefore shall conclude with returning Thanks to our unknown Correspondents, who sent us Abstracts of any Debate that happened, or any remarkable Speech that was made; for tho' we have not published those Abstracts in the same Form they were sent us, those who sent them will see, they have been of great Use to us in drawing up the Substance of the Debate; therefore we hope they will be so far from taking amiss, our not publishing what they sent, in the very Form they sent it, that they will repeat the Favour, as often as they have an Opportunity.

INDEX to the DEBATES in Parliament, ESSAYS, POLITICKS, Domestick and Foreign OCCURRENCES, &c. 1737.

A BSOLUTION, of the Office of	438
<i>Abyssinia</i> , Emperor of, his Guard of Lions	560
Acts pass'd 107, 164, 220, 334. An Account of several of them	334
Addresses of the two Houses	105
Admiralty, Sessions of	107, 703, 704
Advertisement to the <i>English</i> Merchants	686
Afflictation, the Character of Coxcombs	500
Air, Light and Heat, and almost all Necessaries tax'd	627
<i>Algernon Sidney</i> , a Quotation from him	15
Alienation Fines	76 D
Alphabet, Convention of, upon an Article of News	322, 370
<i>Altena</i> , Town of	83
Ambition, the Misery of it	9 E
<i>Amelia</i> and <i>Caroline</i> , Princesses, their Birth Day celebrated	275
Annuitants, Pledges and Mortgagees	604, 623, 624
Annuities, of casual ones	65
<i>Antego</i> , of the Plot of the Negroes there,	

and Executions on that Account	190
Anthem perform'd at the Queen's Funeral	704
<i>Argyll</i> , Duke of, an Instance of his Regard to the Interest of Merchants	333
<i>Arundel</i> , Duke of, Questions propos'd by him, upon which the Judges were order'd to deliver their Opinions	724
Army, Letter from an Officer of 370. <i>Craftsman</i> concerning it 375. See Land Forces	
Articles of Union, Debates on them in relation to the <i>Edinburgh</i> Bill	741, 748, 753
Affixes 164, 219, 333, 396, 397, 455, 456	
<i>Atboll</i> , Duke of, proves his Claim to the Title of Lord Strange	163
Avarice, the Misery of it 101. Its Mischiefs, especially to Lovers	191
<i>Austria</i> and <i>Bourbon</i> , Houses of	38 E
Authors, Booksellers, Compositors, Pressmen, &c.	502

B AGNALUCK, Siege of the Germans defeated there	459, 460
<i>Balducci</i> , a Proposal on his renown'd Invention	563
	5 G

INDEX to the ESSAYS, &c.

- Bank Scheme*, a new one, for discharging the Land Tax, &c. 57. Remarks upon it, shewing it to be pernicious both to the Landed and Trading Interest, and to the Liberties of the People 60—71
- Bank*, the Value of a new Grant to it computed 59. A more just Computation of it 64, 65. General Courts of 164, 516. Its first Establishment 194. What Bishop *Burnet* says about it *ibid* D. Governors and Directors chosen 219
- Banking*, *E. India* and *S.S. Trades* 538, 539
- Bar*, Dutchy of, taken Possession of for King *Stanislaus* 110
- B—rd*, Sir *J—n*, his REASONS for our Representatives to take Advantage of the present Rate of Interest, for the more speedy lessening the national Debt, and taking off the most burdensome of the Taxes 230—235. His Speech and first Proposition for reducing the Interest of the Funds 542 F. Speech and Motion for taking in Subscriptions, in order to reduce the publick Funds to 3 per Cent. Interest 581, &c. His Answer to Mr. *W—n*'s Speech 650. His Motion for resolving to take off some of the heavy Taxes 655. His Answer to Sir *R—t W—le* about the 3 per Cent. Scheme 673
- Baib*, Amusements of 684
- B—st*, L—d, his Speech for a particular Inquiry into the late Riots and Tumults 292. About reading the King's Message to the Prince 431
- Begging*, the Art of 27. Religious Begging 28
- Bergue and Juliers*, Affair of the Succession to those Dutchies 55, 278, 707
- Bird*, *Mary*, burnt 395
- Bishoprick*, Instance of the Refusal of one 339
- Black Prince*, his Character, and his Father's Concern to promote his Popularity 133
- Blood*, an artificial Sort of 238
- Bonneval*, Count, his Conduct and Success against the *Germans* 459, 460. Prospect of the Success of the *Turks* under him 647
- Bowline*, *Jack*, Story of him 688
- Breeding*, good 17
- Bristol*, Mayor of, his Cause 396
- Britain*, its Advantages with respect to the Disposal of Offices 114 A
- British Colonies* 384
- British Government*, the Nature of it 77
- Bubble*, *Edward*, his Letter. See Letter
- Budgell*, Mr. drowns himself 274
- Bull*, Mrs. an Epistle to her from one of her Daughters 17. Mrs. *Bull*'s Answer 18
- Burial of the Dead*, of the Office of 438
- Burials*, Monthly Account of 54, 109, 166, 222, 277, 338, 398, 458, 518, 578, 646, 706. Yearly Account of 705
- Burlington*, Earl of, the Barony of *Clifford* adjudged to him 275
- Bute*, Earl of, chosen one of the 16 Peers for Scotland 219
- C.
- C**ALCULATIONS, in relation to the Civil List 421. Relating to the *S. S. Company*, the *Bank* and *E. India Company* 534, 541. With respect to the *S. S. Annuities* 546. In relation to paying off our Debts 618
- Candidates for Offices 116
- Carrying and Fishing Trades 584
- C—t*, L—d, his Speech for a particular Inquiry into the late Riots and Tumults 284. His Speech and Motion for ordering the Magistrates of *Edinburgh* to attend the House 297. His Speech about reading the King's Message to the Prince 430
- Cecil*, Lord *Burleigh*, his Memorial to Queen *Elizabeth*, of the Danger of being governed by any one Counsellor 564
- Chancellorship explained 94
- Charitable Corporation, of their late Proceedings 34
- Charles II.* a remarkable Saying of his in relation to his Ministers 324. The Court Writers in his Reign use the same Arguments with those in our Time 435
- Chauvelin*, M. his Disgrace 110, 167. His *Miserere* to the Cardinal 199. Cause of his Disgrace not what is pretended 223. He is banish'd 339
- Chelsea-Hospital*, Debate relating to the increas'd Charge of it 521. Two Rules for intitling Soldiers to the Benefit of it *ibid* B, C
- Cb—ld*, E—l of, his Speech in the Debate on the Play-house Bill, as publish'd in *Fog* 378. A more exact Account of it 401—409
- Christnings. See Burials
- Civil List Revenue, the Rise and Nature of it 348. Of the Civil List in *K. George I*'s Reign 349 D. In the present Reign 350. Calculations in relation to it 421. The Danger of too large an one 426
- Claudius*, how he was made Emperor 226. Character of him and his Government 227
- Clergy, a Letter in Defence of them 135 B
- Cluff*, Corporal, his Case 274
- Comedian's Case 637
- Comedy, antient, middle, and new 308, 309
- Commodities, how Taxes on them raise their Price 617. Natural Commodities, and those produc'd by Art and Industry 655 A. Their Price depends on the Price of Labour 656
- Commodus*, the Emperor, a Passage concerning him 376
- Common-Council Men, Election of 705
- Common-Sense*, or the *Englishman's Journal*, set up 75 B. Answer to it 203. His Character of the *Gazetteer* 383
- Common Sense no very common Thing 76 Com-

INDEX to the ESSAYS, &c.

Commons Address to the King	105	525—542. On the first Proposition for	
Conceit, of Persons taking to their Beds and		reducing the Interest of the Funds	542—
dying thro' mere Conceit	237	548. On the Motion for impowering his	
Confirmation, of the Office of	438	Majesty to open Books for taking in Sub-	
Connoisseurs	385	scriptions, in order to reduce the publick	
Conquests, foreign, of the Interest of this		Funds to 3 per Cent. Interest	581—628.
Nation with respect to them	244	On the Motion for reducing all the publick	
Conscience, Torments of an evil one	9	Funds to 3 per Cent. 649—654. On the	
Conversation, a modern polite one, between		Motion for resolving to take off some of	
some young Ladies and a Gentleman	90	the <i>heavy Taxes</i> 655—672. On the Mo-	
Coopers, a Verdict given in their Behalf	395	tion for committing the 3 per Cent. Bill	
Cordwainers and Curriers, Cause between		672, 673, 674. In relation to the new	
them	274	Duty propos'd to be laid upon <i>Sweets</i> 674—	
Corn, Mobbing about the Exportation of it		684, and 709—715. In the H—se of	
ibid		L—ds, in relation to the Murder of Capt.	
Corruption, how to know when it is in a		<i>Porteous</i> 715. On the Motion for declaring	
Government	321	the Sentence pass'd against him erroneous	
<i>Corfica</i> , Affairs of	167	718—723. In relation to examining the	
<i>Corficans</i> , a new Plan of Government, and		<i>Scotch Judges</i> at the Bar, at the Table, or	
a new King for them	265	upon the <i>Wool-Sacks</i> 724—735. In the	
<i>Courland</i> , Duke of, his Death 278. A new		H—se of C—ns, against going into a	
one elected	338	Committee on the <i>Edinburgb Bill</i> on the	
Court Flatterers	639	10th of <i>June</i> 736 G. In relation to the	
Court Jesters	324 A	first reading of the Bill 738, 739, 740.	
Courtship, a Case in 498. Remarks upon it		On the Bill itself 740. Arguments against	
ibid		it ibid. Arguments for it 746. Reply 752.	
Coxcombs 500. Female Coxcombs 504. Se-		Debtors, their sad State in <i>England</i>	260
veral Sorts of Coxcombs	689	Debts, publick, whether better to have them	
<i>Coyle, Richard</i> , his Execution, and some Ac-		in the Hands of one great Company, or	
count of his Tryal	163, 164	several 537. Calculation in relation to	
<i>Craftsman's</i> Reply to the <i>Gazetteer</i> , about		paying them off	618
<i>Prince Richard</i> and <i>Prince Henry</i> 150 F.		Declaration of Rights	78
His Remarks on the Bill for restraining the		<i>Demosthenes</i> , Extracts from two Orations of	
Stage 304, 323. His Dream 311. Ta-		his against <i>Philip</i>	639, 692
ken into Custody 373. His Remarks con-		<i>Denmark</i> , Manufactures lately set up there	
cerning the Army 375. His Advertisement			519
384 F. His Account of his Case 432,		Dependence, two Sorts of	413
435, Examined by the <i>Gazetteer</i> 443.		<i>Devonshire</i> , Duke of, his Speech at the O-	
Farther Account of his Case 552. His		pening of the <i>Irish</i> Parliament	575
Advertisement to his Readers	691	Diet, Observations on it	183, 184
Creditors of the Publick. See Publick Creditors		Discontents, Causes of the present	483, 495
<i>Cromwell</i> , of the Army under him 484, 490		Dissenters, their Management in relation to	
Curates, their Case consider'd 135, 136. Of		the Test Act	208
their Salaries compar'd with those of the		Divisions, who are for fomenting them	382 F
Rectors	136	Dram-drinking, Rise of it 185 F. The	
Curtain Lectures	636	Mischiefs of it among the Women 691, 692	
<i>Czar</i> , the late, Story of him	261	Dress among the Ladies, Essay on it 129.	
D.		Three Classes only allow'd to dress, and	
DEAD Bodies, Quality of some Earths		how; the handsome, the pretty, and the	
to preserve them	237 C	genteel ibid. How the ugly should dress	
DEBATES of the last Session of Parliament;		130. Absurdity of Dress in old Ladies	
in the H—se of L—ds, about an Inquiry		ibid. Of Dress among the Men	ibid C
into the late Riots and Tumults 284—		<i>Dryden</i> , the Poet Laureat in <i>Charles II'd's</i>	
300. In the H—se of L—ds and C—ns,		Reign	407
on the Motion for settling 100,000 <i>l.</i> per		<i>Dublin</i> Society, for improving Trade, Hus-	
<i>Annum</i> on the Prince of <i>Wales</i> 341—		bandry, &c. their Observations	83 C
368, and 409—429. In the H—se of		Dumb-Shews	433
L—ds, on the Play-House Bill 378,		<i>Dutch</i> , their Government very absolute and	
401. About reading the King's Message		severe 86. Imperial Loan wisely refus'd	
to the Prince 430, 431. In the H—se of		by them 278. Difference between us and	
C—ns, on the Motion for continuing		them, as to Money and Land 598. Our	
the same Number of Land Forces 470—		Advantages over them and the <i>French</i> 599.	
497. In relation to the increas'd Charge		Cause of their Penuriousness and Industry	
of <i>Chelsea-Hospital</i> 521. On the Motion		611. Of their Taxes	614, 615
for paying a Million to the S. S. Company			

INDEX to the ESSAYS, &c.

E.

EARTHQUAKE	274
<i>East-India Company, Governors and Directors chosen</i>	219
Eclipse of the Sun on Feb. 18. Passage of the Penumbra in it	33
<i>Edinburgh, Royal Infirmary of 50. Bill of Mortality there in 1736</i> <i>ibid.</i> Provost of <i>Edinburgh</i> taken into Custody 219. Admitted to Bail 220. Case of the City of <i>Edinburgh</i> 254. Of the late Riot and Murder there 287, 290 G, 298. The Magistrates, &c. order'd to attend the H. of Lords 300. Farther Thoughts on the <i>Edinburgh</i> Bill 302. Preamble to it 335. Proceedings in relation to it 715. Copy of it, as first pass'd in the H. of Peers 717. History of passing the Bill, as it now stands 735. It was like to be lost in the H—se of C—ns, with their Amendments to it 737. Debate about reading it a first Time in the H—se of C—ns 738, 739, 740. Arguments against the Bill 740. Arguments for it 746. Reply 752. Chief Speakers 757. See <i>Porteous</i> .	
<i>Edward III. his Regard for the Honour of his Son the Black Prince, and a remarkable Saying of his to that Purpose</i>	347
<i>Egyptians, of their ancient Monarchs</i>	565
<i>Their Funeral Ceremonies</i>	566
Election, Reasons for not giving a full Account of any	566
<i>Elizabeth, Queen, her Generosity</i> 134. A short View of her Reign 478, 491. Her Speech to her Army at <i>Tilbury</i> 505. Queries relating to her 635. Answer to them <i>ibid</i> G	
Emancipation, what	366 A
Emperor and <i>France</i> , of the late Peace between them	482, 494
Employments, of buying and selling them	376 G
<i>Empson and Dudley</i>	559
<i>Etiquette, or Ceremonial of the Palace in Spain</i>	37
<i>Eton Scholar's Letter to his Master</i>	78
<i>Europe, ancient and present State of</i>	487
Excise-Scheme, a new one	186, 681
Excises, short History of	153
Exclusive Privileges to particular Societies are Monopolies	62
Executions, of Abuses in relation to them	152
Executions at <i>Tyburn</i> , &c. 163, 335, 395,	576
Exorcist, a new Kind of	441
Expedients, of temporary ones	63
Expence, publick, Methods for lessening it	679
F.	
FAIR Sex, Advice to them	500 A
<i>Falstaff, Sir John, misrepresented by Shakespear</i>	142
Family Disputes among great Persons	134

Farmers, their Case upon the Reduction of Interest	602, 620
Female Coxcombs	504
Females, terrible Consequences of their Loss of Virtue, and a Story to that Purpose	386
Fines on original Writs, and Alienation Fines	76 D
Fire in the Temple 50. At <i>Royston</i> <i>ibid.</i> In <i>Southwark</i> 52. In <i>Little Britain</i> 164. At <i>Namptwich</i> 333. At <i>Wapping</i> <i>ibid.</i> At <i>Holborn Bridge</i> 515. Near <i>Golden-Square</i> <i>ibid</i>	
<i>Flavia's Character</i>	505
<i>Fleet Market open'd</i>	575
<i>Flemish Trade</i>	609
<i>Fleury, Cardinal, his Character</i>	30, 558
<i>Flint Election, a full Account of the Proceedings upon it</i>	463—466
<i>Fog, Revolutions in that Paper</i> 301, 306. Old <i>Fog's</i> dying Speech 306. The Author, &c. taken into Custody	383
Footmen make a Disturbance at the Playhouse 107. Again 163. Trial of two of them	220
Foreigners, of Interest paid to them	206
Their Case with regard to our Funds	605, 625
<i>Foster, Mr. Abstract of his Answer to Dr. Stebbing, on the Subject of Heresy</i> 118. Abstract of his Answer to the Dr's Reply, in the <i>Old Whig</i>	142
<i>Fox and Weazle, Fable of</i>	198
<i>France, of our conquering it</i> 244, 259. Queen of, deliver'd of a Princess 399. Of the Cities and Towns there 557. Present State of 558. The Interest of Money there 613. Publick Revenues there and in <i>England</i> compar'd	615 A
Free Masons suppress'd in <i>France</i> 167. Some Reflections upon them 200. They seem to be a military Order	201
<i>French Politicks for exalting the Church, and encouraging Trade</i>	399
Friendship, Observations upon it	16, 377
Funds, of the Proprietors in them, and particularly Foreigners	541
G.	
GALLANTRY of an <i>English Gentleman</i> , a pleasant Instance of it at <i>Paris</i>	110
Gaming, Extravagance of	684
<i>Gazetteer, Remarks on it</i> 36, 88, 130, 150 F. 502 B. Answer'd 93, 140. <i>Pasquin's</i> Letter to the <i>Gazetteer</i> 261 A. <i>Gazetteer's</i> Criticism on the E—l of Cb—ld's Speech 380. <i>Common Sense's</i> Character of the Writers in that Paper	383
<i>Geneva, Insurrection there</i>	519
<i>Georgia, Colony of, its State</i>	50
<i>German Army, its Progress against the Turks, See Muscovite</i>	
<i>German Dominions</i>	245
<i>German Highnesses and Flemish Excellencies</i>	82
<i>Germans, their Character</i>	501

INDEX to the ESSAYS, &c.

Gin-Act, a Dissertation upon it, wherein the said Act is considered with regard to the Trade and Riches of this Kingdom, and with regard to the Morals, and the social Virtue and Liberty of the People 19
 —27. A Letter from a Gentleman in Town, to his Friend in the Country, the Day after the said Act took Place 323.
 A Letter concerning the putting it in Execution 559
 Gold, the Reason of the Difference between the Purchase of it in Guineas, and the Purchase of the same Sort in foreign Coins 62 D
 Good and Evil, Mixture of 369
 Governing Power must be absolute 246 E
 Government, Observations on it, and when it may be said to be free 242. The Mistake of dividing it into two Classes only 243. Several Sorts of it, particularly that of England *ibid.* Harrington's Principles of Government 319. A Rule to know when there is Corruption in it 321. The Nature of absolute Government 434
 Greeks and Romans, their Virtue and public Spirit compar'd with the Degeneracy of the present Times 149
 Greenwich-Hall, the Painting there defended 385
 H.
HAMBURGH, City of, with several Observations on the *Hamburgers* and other *Germans* 81 G
 Hamills, Agents for the *Londonderry* and *Iniskilling* Men, their Case 557
 Hammond, Mary, a poor Woman, dies rich 396
 Hankey, Alderman, Knighted 455
 Haquebuts 721, 752
 H—cke, L—d, his Speech for a general Inquiry into the late Riots and Tumults 289
 Harlequins, the Absurdity of our modern ones 441
 Harrington's Principles of Government 319
 Heirs Apparent to the Crown, Precedents of an independent Settlement upon them 343, 344. And upon the Presumptive Heirs 345. The Parliament's Right to interpose in that Affair 345 C
 Henry V. his Character, and his Father's Treatment of him 132. Stow's Account of his Robbing on the Highway, when Prince of Wales 141 E. A remarkable Story of him 182
 Heroines Hermaphrodites 504 F
 Hildbourghausen, Prince of, his ill Success 459
 Hobson's Choice, Rise of that Proverb 455
 Homer, Verses from him 239
 Honour, the modern Man of 235. Several Letters from one of that Character 235, 236
 Horse, a prodigious Stone found in the Stomach of one 396. Instance of one of a remarkable Age 575

Hospitals, Account of Persons cur'd and discharged 220
 H—w. Mr. his Speech about owning the 3 per Cent. Scheme 673
 Hudibras, Verses out of him 208
 Humdrum, Esdras, Esq; Catalogue of his Manuscripts 207
 Husband, how to reclaim a perfidious one 506
 Husslecaps, for spreading Lies 150

J.

JACK Catches, the humble Remonstrance of that antient and useful Society 138
 Jack the Giant-Killer, an epic Poem, a Dialogue concerning it 247 F. See *Leonidas*.
 Jacobites and Papists 479, 492
 James I. a Proposition to him for bridling the Impertinence of Parliament 153. A Story of him 261. His Argument why Witches would not sink 396. Notes
 James II. of his Army 484, 490
 Idleness and Extravagance occasion'd by a Multiplicity of Taxes 667
 Jealousy, political 383
 L—, E—l of, his Speech in Favour of the Motion for ordering the Magistrates of *Edinburgh* to attend the House 297 G.
 About reading the King's Message to the Prince 430
 Importation and Exportation 584
 Indian Philosophers, their Practice 375
 Informers, the Danger of encouraging them 23
 Informers, Spies and Intelligencers 686, 687
 Interest, a Proposal towards lowering the Interest of all redeemable National Debts, to 3 per Cent. per Annum 148. Remarks upon it, 153, 205, 206. Sir J—n B—d's first Proposition in relation to it 542 F. Answer'd by Sir R—t W—le, 547. Debate relating to the Motion for empowering his Majesty to open Books for taking in Subscriptions, in order to reduce the publick Funds to 3 per Cent. Interest, 581. Arguments for the Motion, *ibid.* Arguments against it, 595. Reply, 607. Mr. W—n's Speech and Motion for reducing all the publick Funds to 3 per Cent. Interest, 649. Answer of Sir J—n B—d and others, 650. Amendment offer'd by G—l W—de, 654. Chief Speakers in the several Debates, 655. Debate on the Motion for Committing the 3 per Cent. Bill, 672. Speakers for and against it 674
 Ireland, some Queries relating to it 248
 Isocrates, Story of 74 F
 Israelites desiring a King 73, 74
 Italian Operas and Masquerades 306, 321. 324 G
 Italian Musick, Masquerades and Dumb-Shews 433
 Julius Caesar, of him and his Party 381

K.

K EHL, Fort, and *Philipsburg*, deliver'd up by the French 110
 Kennel Pit set on Fire 219
 Kick-

INDEX to the ESSAYS, &c.

- Kicking, a Dissertation on it, 309. Amendments to that Scheme 321 E
- KING arrives from *Hanover*, 50. Lord-Mayor and Aldermens Congratulations thereupon, with his Majesty's Answer, 51. He opens the Parliament by Commission, 104. His Answer to the Lords Address, 105. To the Commons, 106. Congratulated on his Recovery, *ibid.* Passes the Malt-Tax Bill, 107. Passes the Mutiny and Desertion-Bill, &c. 164. Passes the Land-Tax Bill, &c. 220. His Message for settling a Jointure on the Princess of *Wales*, 275. His Message to the Prince of *Wales*, about his Settlement, 283, 360. His Speech at the End of the Session, 334. Acts then pass'd by him, *ibid.* Of the Difference between him and the late King his Father, 365 F. His Answer to the Lord-Mayor and Aldermens Congratulations on the Birth of a Princess, 454. To the University Addresses, 515. Letters and Messages between him and the Prince, 628, &c. His Birthday celebrated, 577. His Answer to the Address of the *Irish* House of Commons, 644
- King can do no Wrong*, Observations on that Maxim 507
- King's Political and Royal Capacity, and his Natural and Paternal Capacity 358 E
- King's-Evil, of the Royal Touch for it, 439 G. The Difficulty of reviving it humorously represented 440
- Knaves and Fools 382
- Kouli Kan*, Copy of a Letter concerning him 30 L.
- LABOUR of a whole People more valuable than Mines of Gold and Silver, 83 F. The Price of Labour depends on the Price of Provisions 656
- Labourers, Taxes, &c. 606
- Ladies, consolatory Advice to them during their Recess in the Country 444 F
- Lady's Head-Dress, Luxury of 84
- Land Forces, the Number voted, 467. Debate on the Motion for continuing the same Number, 470—497. Arguments for the Motion, 470—475. Speeches against the Motion, 475—486. Speeches in Reply, 486—497. Numbers upon the Division, 497 F. Speakers in the Debate 521
- Land-Tax, and Taxes upon the Necessaries of Life 66
- Land-Tax, its Inequality, 206. Scheme of the Proportions paid to it, &c. 703
- Land-Tax voted 469
- Land improv'd by a low Rate of Interest, 587, 588, 616, 617
- Landed and moneyed Interests, 205. How Matters may be accommodated between them 207
- Landed Gentlemen and Tradesmen, their Case upon the Reduction of Interest, 601, 618, 619.
- Law, of the Amendment of it 15
- Law, Lawyers, and Debtors 260
- Leasing-Making 637
- Legacy to Ministers, a remarkable one 497
- Leicester*, an odd Trial there 219
- Leonidas*, an Epic Poem lately publish'd, a Letter to *Common-Sense* about it, 198. Remarks upon it in the *Weekly Miscellany*, 238—242. A Letter to the Author, 256. The Beginning of the Poem censur'd, 258. Conclusion of the Remarks upon it, 318. Two beautiful Passages from it, 318, 319
- L' *Estrange*, Sir Roger, and the present C—t Writers compar'd 443 B, 446
- Letter from a Country Gentleman, just come to the Possession of an entail'd Estate, in relation to the Debts contracted by his Father, 169—181. Extract of a Letter from a *British* Planter in a *Dutch* Sugar-Colony, to his Friend at *Antego*, 190. A Letter from a Gentleman on his Death-Bed, to his intimate Friend, 249. From an Officer of the Army, 370. From Poetaster *Jingle* 444
- Letters and Messages, that pass'd between the King, Queen, Prince and Princess of *Wales* 628—634
- Libels 505 F
- Liberty, Civil, its Extent and Restraints 246. Two Out Sentries of Liberty 409
- Liberty and Licentiousness 305. The Limits between them hard to be determin'd 403
- Liberty of the Press 324, 435, 501. How the Play-House Bill may affect it 405 A. Several Methods for restraining it 693
- Locke*, Mr. his Opinion about the Reduction of Interest fairly represented 607, 608. Story of him 684
- London*, how the Land-holders and Shopkeepers in and about *London* would be affected by the Reduction of Interest 602, 620 A. Case of the Inhabitants with regard to Taxes 658, 662, 667
- London Journal* a good Soporifick 554
- Londonderry* and *Inniskilling* Men, their Case 555, 556. Part of a Speech in Parliament in relation to them 557
- Long Life, a remarkable Instance of 397. Another 576
- Lorain*, Duke of, made the Emperor's Generalissimo in *Hungary* 339
- Lorain*, Dutchy of, its Advantage to *France* 399
- Lord Mayor, new one chosen 516. Sworn in 577
- Lord Mayor and Aldermens Congratulations to their Majesties on the King's Arrival 51. On the Birth of a Princess 454, 455. To their Royal Highnesses thereupon 516
- Lords Address to the King 105
- Lords Protest on the Motion to address his Majesty to settle 100,000*l.* per Annum on the Prince of *Wales* 282
- Lottery Scheme 275. The Drawing begun 644. Ended 705
- Love,

INDEX to the ESSAYS, &c.

- Love, against sacrificing it to our Interest 498, 499
- Lucas, Lord, his Speech in Parliament, in the Reign of King Charles II. 137. Remarks upon it 147
- Luxury, the Misery of it 10
- Luxury and Extravagance promoted by a high Rate of Interest 612
- M.
- M**ALES and Females of several Sorts of Animals, Observations upon 503
- Malt Tax, its Rise 154
- Manlaughter, no such Thing by the Scotch Laws 721, 753
- Manufactures 585
- Marriage, Story of a hasty one 147. That it should be indissoluble 502
- Masquerades 306, 321, 433
- Maxims of State 412
- Measure for Measure, the Argument of that Play 507, 508
- Mendax, his Character, and Conduct in relation to him 382
- Merchants, *English*, Advertisement to them 686
- Militia and Regular Troops compar'd 475, 476. Difficulty of having a well-disciplin'd Militia 487
- Milton, Verses from him 241. Encomium on the Beginning of his *Paradise Lost* 258
- Ministerial Writers, their Conduct in relation to the Bill for restraining the Stage 323 C. Farther Remarks upon them 554
- Ministers, their Arts 136 C, 197. A Legacy to all future ones 497
- Mirth and Cheerfulness consistent with Religion 368
- Misery inseparable from Vice 8
- Mobs in *France* and *Spain* 278
- Mobs and Tumults 480 A, 493
- Moderate Interest 598
- Mogul, Ceremony of weighing him politically explain'd 92
- Moliere, Story of him and the Prince of *Conti* 405
- Money, but one Way of raising it for the publick Service, without laying any new Burden on the People 61 D
- Money-Droppers 551
- Monti, Marquess de, disgrac'd 223
- Morocco, Case of, Danger of a doubtful Succession exemplify'd by it 647
- Murders 107, 164, 333, 456, 515
- Muscovite and German Armies, their Progress against the *Turks* 399, 459, 519, 579
- N.
- N**AMPTWICH, the Market-House there falls down 274. A Fire there 333
- Naples, Church in Danger there 223
- Nation, a short View of its present State, with respect to Religion and Government 79. How it may be respected and esteem'd abroad 481. How the Strength and Power of a Nation may be increas'd 583
- National Debt, State of 549
- National Debts, penal Laws, and Civil List 189, 203
- Natural and legal Interest of Money 589, 607
- Necessaries, almost all tax'd 627
- Nero's Character and Condition 11
- N——le, D—ke of, his Speech for a general Enquiry into the late Riots and Tumults 289
- News-Papers, Character of some of them 75 D
- Newton, Sir Isaac, Encomium on him 82, 83
- Nimrow, Congress of 519. Breaks up 647
- Nixon, his Sentence 106
- Nizza taken by the *Germans* 459
- Nonsense to Common Sense 688
- Norfolk Petition, Account of it 461. A curious Question started on that Occasion, with Arguments on both Sides 461, 462, 463
- Norris, Sir John, arrives with his Squadron from *Lisbon* 220
- Northumbrians defended 313
- O.
- O**CZAKOW taken by the *Russians* 459.
- A more particular Account of it 519.
- The *Turks* endeavour to retake it, but are forc'd to raise the Siege 707
- Officer punish'd at *Paris* for making Perquisites 278. Letter from an Officer of the Army 370
- Officers, of unexperienc'd ones 372. Of those who are Members of Parliament 376 A.
- Of Officers turned out 376 E. Of removing them 485, 497
- Offices in a State, an Essay on Mens Right to them 113. Of the Method of popular Election to Offices ibid A. Of the Sale of Offices in *France* 114. The Advantages of *Britain* with respect to the Disposal of Offices ibid A. A Man's Right to Offices depends on his Virtue and Qualifications, and how to judge of these 115.
- The Difference between Offices of great Power and inferior Offices, with respect to Mens Continuance in them 115, 116. Of Candidates for Offices 116. Of Mens Right of continuing in Offices, and the Inconveniencies of arbitrarily turning them out 116, 117
- Opinion, the Unreasonableness of branding Men with odious Names for mere Difference in Opinion 689
- Orange, Princes of, their antient Power and Authority 77, 86
- Orange, Princess of, her Birth-Day celebrated 577
- P.
- P**ADDINGTON, the annual Custom there 705
- Pains and Penalties, of Bills of 740, 747, 753
- Pallas, the Favourite 690
- Papists, whether affected by the Test-Act 209
- Par-

INDEX to the ESSAYS, &c.

- Parliament, a Seat there an Office that requires constant Attendance 114 D. How Persons must be qualified in order to be chosen Members 263. Of one Parliament binding another 663, 669
- Parliament meets, and is prorogu'd 52. Open'd by Commission, with the Lord Chancellor's Speech 104. Prorogu'd 334. Prorogu'd again 397. Again 576. Prorogu'd for the last Time 703. See DEBATES.
- Parliament of Ireland open'd 575
- Parliament of France, how its Liberty was subverted 80. A Scheme of the same Nature form'd in England in K. Charles II's Reign, prevented by the Lord Clarendon 81. Reflections upon it *ibid*
- Party Divisions 381 E
- Party-Lying; extracted from the *Spectator* 31
- Patronages, Right of, of its being restor'd in Scotland 748, 753
- Patton, Mary, her great Age 397
- Pennsylvania, a Popish Chapel there 373 B
- Pensionary of Holland, a new one appointed 167
- People, lower Classes of, corrupted by their Superiors 149, 150. The Influence that the Example of Persons of Quality and Fortune has upon them 229. Theatrical Representations and Ballads have a great Influence upon them 323 G
- Philostratus, Tragedy of, Extracts from it 506
- Potion, Story of 73, 74
- Picture-Jobbers 385
- Pirates condemn'd 107. Executed, with some Account of their Trial 163, 164
- Places and Employments, Observations on them 208
- Play-Houses, of the Bill against them 264. See Stage
- Pliny's Panegyrick on Trajan 686 D. His Letter to Montanus about Pallas 690
- Poetaster Jingle, his Letter 444
- Poetry, negative Description of 257. Its true Nature 258
- Poland, Famine there 223
- Pole, Michael, Earl of Suffolk, Saying of a Judge to him in Richard II's Time 296
- Political Money Droppers 551
- Political Religion 207 G, 208
- Political Statuary 263
- Political Writers 435
- Political Wizards and Conjurors 436. Description of a famous one 437
- Politicians, Proposal for a College of them 503
- Pompey, Story of him 404
- Poors Bill, Remarks upon it 192
- Popery, its Growth 79, 373. Answer to a Letter about it 383 A
- Popes, History of, Extract from it 135
- Popular Election to Offices 113 A
- Popular States, Observations on 86 C
- Porteus, Capt. Affairs relating to him, 219, 220, 287, 300. Enquiry into his Murder, 548. Debate on the Motion in relation to the Sentence pass'd upon him, 718—723.
- Chief Speakers in it 723 G. See *Edinburgh*
- Posts in the Disposal of the Crown, the Value of them 319 F
- Poverty, Causes of the present general Poverty 86, 87, 88
- Power founded in Riches, 319. Happiness of the Country where Power and Authority are united, 320. How these two stand in the three Forms of Government 321
- Prelatical Zeal and Compliance with the Prime-Minister, a remarkable Instance of it from France 110
- Prerogative of the Crown, and Liberties of the People, and the Necessity of preserving an equal Balance in the Constitution 189
- Press. See Liberty of the Press.
- Pretender's Son, his Progress 339
- Prices of Grain, Stocks, &c. 54, 109, 166, 222, 277, 338, 398, 458, 518, 578, 646, 706
- Priests and Monks to turn Soldiers 579
- Proceedings. See DEBATES
- Proposal for the Benefit of the Country 195, 196
- Propositions offer'd to the House, two Ways of defeating them 650
- Protest. See Lords
- Protestant Powers, their Duty 223
- Provost of *Edinburgh*. See *Wilson*
- Publicans, Opinion of the Roman Senate concerning them 204
- Publick Creditors 594, 606, 626. Their true Interest 651
- Publick Spirit 433 G
- P—y, Mr. his Speech and Motion for settling 100,000*l.* per Ann. on the Prince of Wales 341
- Punch's Character 324 E
- Q**
- QUAKERS, Standing Army of 209
- Quartering of Soldiers 481 E, 494
- QUEEN resigns her Commission as Guardian of the Realm 51. Lord Mayor and Aldermen congratulate her upon the King's Arrival *ibid*. Her Birth-Day celebrated 163. False Report of her Death 456. Her Message to the Prince 632. Her Letter to the Princess 634. Her Death 644. Account of all her Children, and when they were born *ibid*. Her Character *ibid*. The Mourning for her *ibid* and 703. Her Funeral 704. Inscription on her Coffin *ibid*. The Anthem perform'd at her Funeral *ibid*
- Queen of Spain, Story of one 37 G. Law of the Queen's Foot 38
- Querelle *Almaigne* 553
- R**
- RADCLIFFE's Library, the Foundation-Stone of it laid at Oxford 274
- Raleigh, Sir Walter, his Character and Fate 43. Notes.
- Rat and the Statue, a Chinese Allegory 252
- Reason, unassisted by Revelation, its Imprecision 374 F
- Re-

INDEX to the ESSAYS, &c.

- Rebellion, of the late one 247
 Registers, publick ones for Estates, how the
 Want of them may affect the Publick 262 E
 Regular Troops, why kept up by Foreign
 States 475
 Religion, made subservient to worldly Policy
 208. The Practice in *Germany* in rela-
 tion to the two different Religions ibid
 Restoration and Revolution 556
 Richard I. his Character 131, 140 F. Plea-
 sant Story of his three Daughters 141
 Riches, Power founded in them 319. A new
 Sort of Riches ibid A
 Ridicule, how great Men may avoid it 403
 Riots and Tumults, Speeches for a particular
 Inquiry into them 284, 292. Speeches
 for a general Enquiry 289
 Riots and Tumults of the *Cornish* Tinn-
 ers, &c. Proclamation for suppressing them 576
 Robberies, and other Crimes, a Proposal for
 the better preventing them 386 A
 Rogues, Thieves and Smugglers 479 D, G
Routier, the King's Coiner, Story of him 309
 Royal Family, yearly Allowances to the fe-
 veral Branches of it 364
 S.
 SALE of Offices in *France* 114
 Salt-Duty, and Taxes on Soap and Can-
 dles 67, 68. Salt Tax, Land Tax, and
 Sinking Fund 205. Of abolishing and re-
 viving the Salt-Duty 530, 531, 540
 Scotch Judges, Debate upon the Question,
 Whether they should be examin'd at the
 Bar, at the Table, or upon the Wool-
 sacks 724—735. Numbers upon the Di-
 vision, and Names of the Speakers 735
 Scotland, of the Prince of 638
 Scratcher in Ordinary, a new Office 440 D
 Scribbling, of the Itch of 441 C
 Seamen, the Number voted 467
Seckendorf, Count, in Disgrace 647
 Secret-Service Money, the Increase of it 423,
 424
 Self-Murders, their Frequency 374 E. Some
 Considerations on that Subject 445
 Sessions at the *Old Bailey* 51, 107, 220,
 333, 395, 515, 576, 703
 Sessions of Admiralty 107, 703, 704
 Sheriffs, new ones appointed 51. Election
 of, for *London* and *Middlesex* 335, 396,
 397. Sworn in 516
 Ships put into Commission 705
Sine-Cure Posts, Salaries and Pensions 679
 Sinking Fund, Sir *R—t W—le's* Speech
 for altering the Method of ordering the
 Application of it 523. Account of the
 Produce of it 548
 Slave Trade 191
 Slavery shewn to be the necessary Conse-
 quence of the Loss of Virtue among the
 noble and chief Families of a Country 225
 —230
Sleane, Sir *Hans*, Inscription on his Statue
 516
 Smuggling, of the Riots and Tumults occa-
 sioned by it 286 G
 Soldier going to Execution, Story of one 152 C
 Soldiers, Difference between them and other
 Subjects 477 E. They corrupt the Peo-
 ple 480
Solon, Story of 150
 Song on Love and Marriage 322 D
 Sons of the Clergy 220
South-Sea Company, Debate on the Motion
 for paying a *Million* to it 525. Speeches
 for the Motion ibid. Against the Motion,
 and for paying the *Million* to the *Bank*
 527. Speeches in Reply 536. Speakers
 in the Debate 542 D
Spain, Queen of, disappointed 223. Her
 Views 339
Spain and *Portugal*, Accommodation between
 220, 223, 278
Spanish Depredations, *West-India* Merchants
 Petition to the King about them 576.
Craftsman's Reflections upon them 636,
 694. The Ministers vindicated in relation
 to them 638 F, 687 E
 Speaker's Present to the Convention of
Burgs 455
 Spirituous Liquors, a new Proposal for pre-
 venting the Abuse of them 39. Persons
 convicted of retailing them 50, 220. The
 Numbers convicted before the Commis-
 sioners of Excise and the Justices in a Year
 517. The Fines of some mitigated 333.
 Additional Clause to the *Sweets* Bill, in
 relation to those Liquors 335. See *Gin-*
Act
Spittle fields, of the late Tumults there 286,
 290 E
 Squib, a small one for the first of *August* 454
 Stadtholder, his Power and Authority 77, 86
 Stage, of bringing Politicks upon it 262.
Craftsman's Remarks on the Bill for re-
 straining it, 304, 323. Extracts from sever-
 al *Gazetteers* relating to it 307. Immodest
 Action on it censur'd 321. Conduct of
 the ministerial Writers, in relation to the
 Bill for restraining the Stage 323. The
 Bill pass'd 334. *L—d Ch—t's* Speech in
 the Debate on it 378, 401. Of the pre-
 sent Degeneracy of the Stage 432
 Standing-Armies, fatal Consequences of large
 ones 477, 484
Staremburg, Count, his Death 167
 States-General, their Assembly what it ori-
 ginally was, and what it is now 84, 85.
 Of their Council of State 85 G
 Statuary, political 268
 Stebbing, Dr. Abstract of his Answer to Mr.
Foster's second Letter, on the Subject of He-
 resy 1. Abstract of his Reply to Mr.
Foster 125
Stocks-Market put down 575
 Story-Tellers 75
S—rd, E—l of, his Proposition for put-
 ting an End to the Debate on the Mo-
 tion 5 H

INDEX to the ESSAYS, &c.

- tion about the Prince, without putting the Question upon it 431
 Suckling, of Mothers suckling their Children 634
 Suicide. See Self-Murders.
Sultzbach, the Protestant Religion in Danger there 707
 Sums granted by last Session of Parliament, total Amount of 468 E
 Superstition, its Causes 373
 Supply, grand Committee of, Proceedings in it 467, 468
Sweden, Government of 39. Of the late Revolution there *ibid.* Of their Diet 40
 Of their Senate *ibid.* B. The Liberty of Conscience and of the Press wanting there *ibid.* E. Extracts from the present King's Instrument of Assurance 71. His Speech to the States upon their electing him King 73. Their Government a Commonwealth, according to the *Craftsman* 77
Sweets, Affair of 187 C. Additional Clause to the Bill 335. Debate relating to it 674. Arguments for it *ibid.* Arguments against it 678, 709. Reply 711
 T.
TALBOT, the late Lord-Chancellor, his Character 93
 Talkativeness 74
 Tattling Traveller 315, 441 A
 Taxes on the Necessaries of Life 66. How they affect Landed Gentlemen of not above 60 l. a Year Estate 68. Of easing the People only by varying them 187. What Taxes seem consistent with the Liberties of a free People 205. Proportion of the *English* and *French* Taxes 301. How they raise the Price of Commodities 617. Debate on the Motion for resolving to take off some of the *heavy ones* 655. Arguments for it *ibid.* Arguments against it 661. Reply 666. Chief Speakers in the Debate 672. Our Taxes more burdensome than in *France* and *Holland* 668
 Taxes and Tax-Gatherers 204
 Tea-Drinking, Observations on it 184, 185
Temple, Sir *William*, his Account of the Government of the United Provinces 84 D
Temple, a terrible Accident there 515
Ter-Veer and *Flushing*, Dispute about 55
Thames, a great many Persons drown'd in it 219
 Theatrical Representations and Ballads have a great Influence on the People 323 G
Theodore, King, Reward offer'd for killing him 56. Arrested, and discharged with Respect 278
 Thirtieth of *January*, a remarkable Circumstance in relation to the Observation of it 52
Thompson, Verses from him 192
Thornhill, Sir *James*, and his Painting in *Greenwich Hall*, defended 385
Toulouse, Quality of a Vault there to preserve dead Bodies 237 C
 Three per Cent. publick Securities 582, 604. See Interest.
Tillotson, Abp. Letter from him to the Earl of *Sbrensbury* 550
Toulouse, Count *de*, his Legacies 707
 Trade encourag'd and protected in *France* 558
 Trade increas'd by a low Rate of Interest 583
 C, 609. State of it, and Rate of Interest from *Henry VIIIth's* Time 596. Our Rivals in it 616
 Trading Companies, with an exclusive Privilege 529
 Trials 106, 164, 219, 220, 274, 395, 396
Turkish Kioja, the greatest Crime is an absolute Monarchy exemplify'd in him 647
Turks, their Preparations 167. Progress of the *Muscovites* and *Germans* against them. See *Muscovite*.
Turky, a Revolution there occasion'd by a Beggar 247
 Turnpikes, of the Tumults on account of them in the *West* 285, 290 D
Turpin, the noted Highwaymen 275. A Reward for taking him 335. *Common-Sense's* Thoughts about him 434
Tuscany evacuated by the *Spaniards* 55, 110.
 Death of the great Duke of 397, 399
 Tyranny and Tyrants 685 B
 V.
VACANT Commissions, of the Savings that might be made on that Head 375
 Vampires, a Confutation of the Stories about them 236
Vendosme, Duke of, Story of him 152
Venetian Resident order'd to leave the Kingdom 335
 Verses left by a Gentleman who kill'd himself 333
 Ugly Women, how they should dress 130. A Word in favour of them 183
 Vice, the Misery of it 8. Of ridiculing it 308
Vienna, Account of Deaths there in 1736 52
 Virtue, the Progress and Pleasures of it 28 D
 Voice of the People 73 A
Voltaire, a Passage from him in Praise of learned Men, and particularly Sir *Isaac Newton* 82, 83
Urban, Dr. a diverting Piece of secret History in relation to him 562
 Urine, Proposal of a Tax upon it 209 A.
 Observations on that Proposal 250
Ufitza taken by the *Germans* 579
 W.
W—DE, G—J, his Amendment offer'd to the Resolution about the Reduction of Interest 654
Wales, Prince of, his Charity to the City Debtors 50. His Birth-Day celebrated 52. Exempted from 6 d. in the Pound in the Land Tax 220. Motion to address the King for settling 100,000 l. per Ann. upon him 281, 352. The Lords Protest on its being carried in the Negative 282. His Majesty's Message to the Prince 283, 350. The

INDEX to the POETRY.

- The Prince's Answer 284, 360. Speeches in favour of the Motion for settling 100,000*l.* *per Ann.* upon him 341—354. Speeches against the Motion 355—368. Speeches in Reply 409—429. Of his Answer to the King's Message 426 A. Names of the Speakers in the Debate, with the Numbers upon the Division 429, 430. His Answer to the University of Oxford's Congratulations on the Birth of a Princess 515. To the Lord Mayor and Court of Aldermen 516. His Letters to the King and Queen, and Messages to him 628
- Wales*, Princess of, his Majesty's Message for settling a Jointure on her 275. An Act for it pass'd 334. She is deliver'd of a Princess 454. Verses upon it *ibid.* Lord Mayor and Court of Aldermens Congratulations thereupon *ibid.* Her Letter to the King 633. To the Queen *ibid.*
- Wallace*, Sir William 756
- W—le*, Sir R—t, his Speech for altering the Method of ordering the Application of the Sinking Fund 523. His Answer to Sir J—n B—d's first Proposition 547. His Speech disowning any Concert with him about the 3 *per Cent.* Scheme 673
- Wat Tyler's* Insurrection 293, 295
- Water, a new Proposal for taxing it 251 G
- Watermen, Act for regulating them 335
- Ways and Means, grand Committee of, Proceedings in it 468, 469, 470
- West-India* Merchants Petition 576
- West-India* Trade, Treaties between Great Britain and Spain in relation to it 638
- Westminster-Hall*, of the late Insult there 286, 291
- Whigs, old and new, Dispute about them rightly stated 11 E. *Osborne's* Answer to the *Craftsman* about them 14. Their Union urg'd by the *Gazetteer* 435
- White Stockings, to the Ladies who affect shewing them 434 C
- Widdin*, Siege of 579
- Widows and Orphans, their Case upon the Reduction of Interest 602, 620
- William III.* an excellent Passage concerning him and Sir George Robke 376 C
- Wilson*, Alexander, Esq; Bill against him 717. His Petition 736. Debates in relation to his Conduct 743, 750, 754. See *Edinburgh.*
- W—n*, Mr. his Speech and Motion for reducing all the publick Funds to 3 *per Cent.* 649
- Wintemberg*, Duke of, his Death 167, 220
- Wishart*, Dr. charg'd with Heterodoxy 333, 334
- Wit, a Property, to be excis'd by the Playhouse Bill 408
- Witch, Extract of a Letter about the Trial of one 395
- Witnesses, the Manner of examining them in Scotland 722
- Wizards, political 436
- Woman, a Criticism on the Word 437
- Women of a certain Country, who had a Trick of killing themselves, Story of them 152 G
- Wool, how the Exportation of it may be prevented 614
- Woollen Manufacture 585 F. Its Rise and Improvement in France 586
- Wright*, Mr. Prisoners discharg'd by his Executors 52
- Z.
- Z**EAL, prelati cal 110

INDEX to the POETRY, 1737.

N. B. The several Poetical Extracts, intermix'd with the Prose Essays, are directed to in the former INDEX.

- A.
- A**CROSTICK 268. Another, on the Death of the Queen 697
- Adam's* Fall 572
- Addison's* Campaign, a Latin Translation of it continued 100
- Ad Mundi Creatorem* 696
- Advice to *Cloe* 640
- Alfop*, Miss, to her on her curious Needle-Work 325
- Alzira*, Act III. Scene IV. 327
- Amanda*, Advice to her 325
- Anacreontic 695
- Anthem for her late Majesty's Funeral, Verses writ after the Rehearsal of it 700
- B.
- Apothecary's 'Prentice, Letter from 449
- On the Ascension* 266
- Ausonius*, an Epigram of his translated 452
- Ay and No; a Tale from *Dublin* 640
- B**ACHELOR's Litany 510
- B—bb*, Miss, Verses occasion'd by a Gentleman's being ask'd how he lik'd her 642
- Belcher*, Governor, to him on the Death of his Lady 210
- Biter bit 697
- Bridges*, Miss Molly, on her Singing 49
- Brompton* Vineyard 331
- Bulfinch and Daw, a Fable 268
- 5 H 2
- Burg

INDEX to the POETRY.

- Bury Fair, or three young Ladies there* 694
C.
- CALISTA** to *Sempronia* 325
Carlisle, Earl of, on his Picture. 642
Casimir, an Ode of his 326
Celia and the Dean 161
To Celia at Birmingham 266, 325
Charles II. on his Restoration 329
Cbloe; a Song 49. The same inverted ibid
Cbloe monita 640
The Circus, in Latin and English 48
Coke upon Littleton, Verses written in it 393
College Cellar, the Seat of the Muses ibid
The Comet, a new Song 513
The Committee 42
Common Sense, to the Author of 270
Coquet in Perfection 642
*Cornaro's sure Way of attaining a long and
beauteous Life, Verses sent with it, to Miss
W—t—n—ll of Nampton* 155
Country Life, Happiness of 271, 328, 337
On the Crucifixion 329
D.
- DAME Jane, or the penitent Nun** 390
Damon playing upon the Flute 44
*Daphnis, a Puppy, Ode to him playing with
Mirtilla in Bed* ibid
Dean, on his present charitable Scheme 512
Death, the Seat of 700
Democritus, in Latin and English 210
*To Democritus Etonensis, on his blundering
Charge against the Reading Bards* 158
Devil to pay, a new Epilogue to it 102
Direction of a Letter 394
E.
- EARNEST Intreaty, or mild Epostula-
tion** 269
Eating Song, an excellent new one 211
English Oak, or the Spaniards Scourge 643
*Epigrams; on his Majesty's being in a Storm
45. On seeing a Pipe lighted with one of
the Laureat's Odes 46. On Miss Molly
Bridges singing 49. On the Birth of Mi-
nerva and Bacchus 102. On the Transla-
tion of the Bishop of Oxford to the See of
Canterbury ibid. On Tindal's Answerers 161.
Celia and the Dean ibid. Dr. Stebbing and
Mr. Foster ibid. On the Death of the late
Lord Chancellor ibid. The scornful Beau-
ty 218. On Leonidas 271. More Epigrams
452, 511, 514, 573, 642, 643
Epitaphs 161, 270, 329, 392, 450, 573, 699
Eupuch of Terence, Epilogue to it 267
Exodus. xv. Part of it paraphras'd 567
F.*
- FADING Flower** 268
Fair Penitent, a new Epilogue to it 101
Fame, an Ode to it 41
Fancy. See Palace.
Farewel to Friendship 162
The Flight, an Ode 162
The Forsaken Lover 702
*Friend, to the Memory of my dear Friend,
Mrs. —* 390
I.
- JANUS, an Ode, occasion'd by the Birth
of the young Princess** 513
Interest, upon the Scheme for reducing it 216
The Intestine War 392
*Johnson, Edw. Epitaph on 450. Verses on it
ibid. Another Epitaph on him* 699
Irwin, Lady, on her Picture 642
*Justices, C—m—s—ners for repairing the
Highways, Verses to them* 266
K.
- KING, on his being in a Storm at Sea
45. On the Report of his going to
Hanover** 388
King John, a new Prologue to 98
Kiss for Kiss. A Tale 157
The Kiss repaid 268
*Knowledge, on one of a general, cursory
Knowledge* 271
L.
- LADY's Resolve** 161
*Lady, Verses occasion'd by one playing
on a Harpsichord 49. Verses address'd to
one 512. To the same, on her returning
the foregoing 513. On one dropping a Pin
572. To one with some Tickets in the
Plate Lottery 642. On the Friendship of
two young Ladies 698. To a pretty Lady
who sung very well, by a Gentleman who
was thought not to like Musick* 700
Lads of the Mill. A Song 160
Lasting

INDEX to the POETRY:

Laſting Beauty	448
Laurcat's Odes, on ſeeing a Pipe lighted with one of them	46
Leonidas, on reading it 271. On reading a ſevere Criticiſm on it ibid. To the Author of it	331
Letter from a Lady to her Huſband	392
Lockman, Mr. his Verſes on ſeeing his Daughter, an Infant, in her Coffin	97
London's Ordinary, a merry old Ballad	453
London Summer	698
Lovely Miſtake	449
Luckin, Sir Harbottle, a Paſtoral occaſion'd by his Death	156

M.

MAGPYE ſtrip: A Fable	331
Manaſſes, Prayer of	510
Mantua-Maker	574
Melancholy extempore Ejaculation	700
Melinda's Complaint	574
Mentor, a Speech of his imitated, from Tele-machus	567
Micah vii. 6, 7, 8, paraphras'd	701
Miller of Mansfield, Prologue to it 701. Epilogue ſpoken by the Miller's Wife	702
Minerva and Bacchus	102
To his Miſtreſs	103, 697
Modern Life; or the Coquet in Perfection	642
Mournful Apology	212
Mur—y, Mr. to him, occaſion'd by his late Speech.	330
Muſes, their Seat. See College Cellar.	

N.

NEW-Year's Ode	46
Nothing, a Ballad on	218
The Nun	390, 510

O.

OLD Coquette	102
Opposites, the two	699
Ovid, an Elegy of his tranſlated	212
Oxford Toaſts, Lampoon on them	41

P.

PALACE of Fancy	447, 509
Paſſive Obedience, an Epitaph on	392
Poſtor's Wiſh	103
Penitent Nun	390
Penſion Parliament, Verſes on it	573
The Perpetual Motion	643
Peterborough, to the preſent Biſhop of	391
Phebe and Strephon: A Dialogue	697
Poetical Ladies, Advice to them	330
Pope, Mr. an Epistle to him, by a Lady, occaſion'd by his Characters of Women 47. Some Verſes of his 159. Verſes occaſion'd by reading his Imitation of an Ode of Horace 162. An Epitaph by him 329. Verſes to him, by a Youth of ſixteen	513
Potter, Dr. on his Tranſlation to the See of Canterbury	452
Progreſs of Learning, from a M S. Poem ſo entitl'd 510. Another Poem on that Subject	641
Proſerpine, a Deſcription of her weaving	273
Proverbs, Ch. vii. ver. 6, &c. in Verſe	514

Pump-Room Bull	267
Purſer of a Man of War, Epistle from	389

Q.

QUEEN, Ode on her Birth Day	158.
On the painful Operation perform'd on her 643. On her Death ibid. Acroſtick on the ſame	697
The Queſtion	570

R.

RAT turn'd Hermit. A Fable	218
Reading Bards. A Song	217
Requiſite Remonſtrance	450
Rich, an unanſwerable Apology for them	103
Riddle for the Ladies 392. Anſwer to it	449.
Another Riddle 571. Solution of it	699
Rover reclaim'd	45

S.

SAILOR's Song	332
School-Maſter's Petition to the Truſtees of the School	272
The Scornful Beauty	218
Sea-Chaplain, an Ode by one	572
The Senate-Houſe	573
The Shining Toaſt, or Glory of Suffolk	698
The Sincere Admirer	700
Songs, viz. Damon playing on the Flute	44.
Cloe 49. The Laſs of the Mill 161. A new Eating Song 211. The Pleaſures of Vaux-Haſt 217. The Reading Bards ibid. Nothing 218. The Pump-Room Bull 267. The friendly Caution 331. The Sailor's Song 332. London's Ordinary 453. Strephon's Deſpair 512. The Comet 513. The unſavory Pudding 563. The Mantua Maker 574. Melinda's Complaint ibid. Advice to Cloe 640. Woman 697. The London Summer 698. The forſaken Lover	702

Sonnet from Monſ. Fontanelle	448
Spiritual Brewers	271
Spleen, a Fit of	159
Sprong, John. Epitaph on	270
Stebbing and Foſter	161
Stirling, Mr. to him on his late Performances on the Claſſicks	101
Storm, Epigrams on his Majeſty's being in one at Sea	45
Strephon and Daphnis. An Eclogue	159
Strephon's Deſpair on the Death of Delia	512
Sylvia, on ſeeing her Picture 330. To her looking kindly	387

T.

TALBOTUS, D. ad Poetas ſuper repentina ejus Morte 102. On his Death 161. Verſes apply'd to his Memory 216. On him and Lord Hardwicke 394. Epigram on them	541
Taming of a Shrew	99
Thames, the Praise of it	216
Theodore, Lord, Epigram on	452
Tickets, to a Lady with ſome in the Plate Lottery	642
Tindal, on his Anſwerers	161
The Tippling Philoſopher	643

Tobacco:

INDEX of NAMES.

Cromarty	517	F.	Gwynn	275	Janssen	52
Cromer	337	F ANE	H.	ibbottson	ibid	
Cullum	457	Farnaby	Amilton	Jenkinson	165	
Cunningham	221,	Farnicroft	109,	Jennings	53	
	276, 706	Farrier	397	Jennison	337	
Curtis	53, 221, 275,	Ferguson	337	Jernegan	336	
	336	Fielding	52	Jesse	54	
Cust	578	Filliot 277.	107, 108	Jia	706	
Customs, Commissioners		Finch	221	Inglish	53	
of	578	Finton	276	Ingoldsby	336, 337	
Cuthbert	457	Firebrace	275	Ingram	222	
		Fishenden	221	Ivel	221	
		Fitz Edwards	109	John	ibid	
D ALRYMPLE	107	Fitz Maurice	108	Johnson 52, 276,	397	
Dames	165	Fitzwalter	645	Johnston	276	
Darby	107	Fleetwood	517	Jones	517	
D' Auvergne	645	Foley	706	Jordan	398	
Davis	165, 517, 706	Fonvive	165, 457	Joyce	276	
Day	457	Forbes	705	Joye	705	
Dee	165	Ford	457, 517	Irby	577	
Deering	220	Forrester	456	Irwin	337	
De Gally	456	Fortescue	457	Isham	165	
De Gols	165	Foster	276			
Delany	518	Fotherby	456, 517	K ANE	108	
Delawar	108, 277,	Foulkes	705	Kay	276, 336	
	337, 518, 706	Fowler	645	Keen	705	
Delillers	221	Fox	276	Kendall	221	
Delme	336	Frampton	336, 397	Kendrik	ibid	
Delorain	336, 397	Franklund	108	Kennedy	706	
Delvin	221	Freind	337, 397	Kennet Herbert	645	
Denew	276	Frewin	705	Key	ibid	
Denison	277	Fullerton	578	King	457	
Desbrisay	578			Kingsford	ibid	
Devonshire	166, 221	G AINSBOROUGH	517	Kinkairdin	221	
Dillon	518, 578	Galley	397	Knaplock	53	
Diston	645	Galloway	276, 517,	Knowles	277	
Dives	456	Galway	577, 578			
Dondonald	336	Gambier	165	L AKE	577	
Dorset	221	Ganning	397	Lambert	706	
Douglas	336, 577, 645	Garbert	54, 645	Lamplugh	645	
Drogheda	107, 577	Gardiner	397	Lancaster	517	
Drummond	165, 337,	Garnock	52	Lavington	645	
	457	Garret	517	Lawrence	337	
Drury	577	Gibbon 52, 221,	457	Lawson 276, 397,	577	
Ducket	337	Gibbs	221	Leake	457	
Dunbar	457, 705	Gibson	276, 645	Lee 53, 109, 337,	577	
Dundale	337	Glover	275	Legg	518	
Dunkerron	220	Godfrey	276	Leicester	517	
		Gooch	221	Leigh 108, 457,	645	
E		Goodall	ibid	Lemon	517	
E ARLE	337	Goodchild	53	Lethieullier	53	
East	645	Gore	457	Lovibond	397	
Eaton	53	Gower	221, 276	Luck	52	
Edwards	336, 457,	Graham	336	Luckyn	107	
	577, 705	Granard	222	Lumley	108, 165,	
Estingham	337	Graves	645	Lutterell	336	
Elchies	221	Green	165, 221	Lyddell	517	
Elliot	336	Greening	222	Lye	645	
Emerson	109, 221	Greenville	275	Lynn	577	
Ereskine	337	Greenwood	517			
Essex	577	Griffith	336	M		
Evans	456, 457	Grigman	53	Aulay	457	
Exeter	165	Grosvenor	220	Mackay	578	
Eyles	398	Gulson	577	Mackenzie	706	
		Gulston	53	Maddox	577	
					Main-	

INDEX of NAMES.

Mainwaring	577	Otway	107	Richardson	646	Stevens	397
Man	457	Owen	517	Richmond	337	Stillingfleet	108
Manchester	577	Oxford	108, 221, 336	Rider	54	Stirling	52
Mann	398, 518			Ridout	517	Stokes	517
Manners	457	P.		Riggs	275	Stonehouse	165
Manning	221	P	PACKER	Riley	107	Stone Lloyd	457
Manningham	52	Paiget	221	Ripley	337	Strange	54
Mapp	705	Paice	107	Roberts	645	Strathmore	397
Marshall	645	Palmer	53	Robinson	52, 108	Strother	221
Matthews	54	Parker	53, 221	Robotom	398, 517	Strutt	108
Medley	706	Parkhurst	108	Rockingham	578	Strype	705
Medlicot	577	Parnel	337	Rogers	53, 398	Stuart	336
Melton	165	Parsons	397	Rolleston	52	Sutton	397, 518, 577
Members, new ones		Patrick	54	Rous	398	Swale	221
109, 166, 222, 338, 457		Patterson	53, 108	Rowe	165	Swan	337
Merley	705	Paul	517	Ruffel	107	Sydenham	276
Merrick	277	Paulet	108, 456	Ryder	337		
Meyer	646	Pauncefort	275	Rye	165	T.	
Middleton	457, 577	Payne	578			TALBOT	108, 165, 336, 517
Mift	221, 517	Peachy	457	S.		Tankerville	337, 457
Monneux	52	Pearce	277, 336	SAINT CLAIRE	221	Taylor	336, 398
Monton	277, 337	Peers	107	Saint George	337	Tempest	336
Montague	337, 518	Pelham	108, 518, 705	Saint John	397	Tench	ibid
Montandre	518			Saint Lawrence	53	Thayer	705
Moody	577	Pepys	108	Saint Loe	166	Thomas	518
Moore	221, 336, 456, 577, 705	Percival	107	Salter	577	Thompson	108, 221, 275, 457
Mordaunt	337, 397	Peters	705	Sanderfon	276	Thormond	107
Morgan	277, 457	Philipson	220	Sands	646	Thorn	577
Morley	457	Phillips	53	Sandy	336	Tipping	337
Morrice	397	Pickard	397	Say	165	Tomlinson	517
Morris	53	Piers	577	Scot	108, 397, 518	Towers	ibid
Morrison	577	Pigot	397, 577	Scrafton	166	Townley	397
Morton	165	Pile	646	Scrivens	645	Townshend	54, 398, 577
Moslyn	54	Pinkney	53	Seaton	705	Trefolis	220
Motte	336	Pitcher	107	Secker	221	Trelawney	645
Moyle	108	Pitfield	397	Sedley	275	Trevarion	165, 645
Mudge	53	Pitt	337	Selkirk	108	Trevor	518, 645, 646
Murray	222, 276	Place	108	Seymour	220	Trimnel	275
		Pocklington	276	Shane	517	Tucker	165
N.		Pollard	52	Shard	645	Tuffnel	337
NEALE	518	Ponsonby	577	Shaw	336	Tufon	397
Needham	54, 398, 645	Poole	54, 108, 165	Sherrard	397	Turner	165, 706
Nelson	705	Popple	337, 518	Shouls	336	Twells	398
Neville	518	Porten	276	Simpson	108, 336	Tyley	645
Newcastle	457	Portland	165	Singer	165	Tyrrel	457, 518
Newport	517	Potter	108	Slingsby	336, 518		
Newton	54	Poulett	645	Smelt	52	V.	
Nichols	276, 645	Price	456, 457	Smith	53, 276, 518, 646, 705	VANDEVAL	456
Noel	53	Primrose	577	Soans	517	Venable	276
Norbury	578	Pringle	53	Soley	705	Ventris	577
Norris	337, 706	Prowze	276	Somerfield	276	Verney	336
North and Guilford	165	Pugh	336, 517, 705	Southby	54, 398	Villiers	517, 578
Northumberland	336	Pultney	275	Speke	397	Upton	53, 646
Nutterville	165	R.		Spence	ibid	Uvedale	221
O.		RAWCLIFF	108	Spencer	221, 276, 517	W.	
ODIAM	457	Rawlins	ibid	Spooner	108	WADE	398
Ogle	277	Raymond	397	Spring	221	Wadman	164
Oglethorpe	337, 577	Reddington	53	Sprint	517	Waite	53
Oliver	517	Reed	336	Staines	108	Wake	ibid
Onslow	337, 646, 107	Reeves	53	Stanhope	397	Waller	336
		Reyners	706	Stanley	53	Wallis	107
		Reynolds	397, 457	Stephenson	276	Walmfley	518
		Rich	54			Walpole	457
		Richards	336			Watts	

INDEX to the Books.

Walsh	221	Westley	166	Willes	54, 165, 337,	Wishart	53
Walter	645	Westmorland	165		398, 706	Withaw	517
Walters	221, 276	Wharton	53	Willey	577	Witherstone	336
Warburton	276	Whetcombe	456	Williams	165, 457,	Woolaston	53
Ward	165, 645	Wherham	517		577, 645	Worthington	52, 221,
Wareing	705	Whicote	164	Williamson	53, 276		276
Warren	165, 517	Whitburn	517	Wilman	517	Wright	221, 456
Washburne	645	White	221, 336	Wilmot	336	Wyatt	53
Watson	52, 457, 517,	Whitworth	336	Wilson	53, 336, 518,	Wymondesell	706
	645, 705	Wickham	706		646	Wynne	165
Watts	398	Wilkes	336	Winder	577		
Webb	457	Wilkins	165	Winderham	705	YATE	275, 645
Webster	397	Wilkinson	336	Windfor	220, 705		
Welchman	517	Willdey	645	Winrofs	577		

INDEX to the Books, 1737.

ARTS, GRAMMAR, and MATHEMATICKS.

A RT of Decyphering	III
— of Painting	648
Bibliotheca Technologica	520
Buchanani Logica	279
Champion's Arithmetick	400
Compendium Syntaxis	112
Collyer's Spelling	648
Dougharty's Gauging	520
Dyce's Spelling-Dictionary	400
— Spelling-Book	648
Exercises at Bristol	400
Farnaby's Rhetorick	ibid
Fisher's Companion	648
Gardner's Survey	279
Geography of Children	400
Greenwood's Eng. Grammar	168
Grey's Art of Memory	580
— Hebrew Grammar	708
Hawthorne's New Bridge	460
Hermes Romanus	520
Hoadley's Accidence	224
Hoppus's Architecture	340
— Measuring	520
— Laboratory	708
Lampe's Thorough Bals	580
Laurence's Survey	168
Laws of Chance	520
Leadbetter's Dialling	279
Lowe's Art of Memory	580
— English Grammar	400
Malie's Architecture	340
Manwaring's Institutes	56
— Classicks	111
Mather's Companion	580
Modern Cook	460
Occasional Critique	111
Ruddimanni Grammatica	224
Saxon's Spelling	520
Square and Cube Root	400
Stirling's Latin Grammar	56
— Virgili Bucolica	708
Stonehouse's Arithmetick	580
Turner's Clavis Eloquent.	400

Ware's Palladio	400
Woodcock's Measuring	648
Wylde's Survey	400

BIOGRAPHY, GEOGRAPHY, HISTORY, and TRAVELS.

B IBLIOTHECA Historico-Sacra	520
Brevet's Remarks	708
Bundy's Roman History	168
Burnet's Travels	648
Concilia Magnae Britanniae	111
Continuation of Rapin	ibid
Chamberlayne's State	580
Cresby's English Baptists	708
Description of Europe and Asia	648
History of the Germans	224
— Chartreuse	ibid
— Reformation	400
— Egyptians	648
Hume's History of the Jews	168
Indian Wars	224
Introduction to Geography	580
Kennet's Roman Antiquities	520
Le Comte's China	400
Life of Hannibal	224
— Porteus	520
— Burleigh	580
Littlebury's Herodotus	520
Maitland's Hist. of London	224
Memoirs of Gaudenzio	ibid
Narrative of Santa Cruz	708
New Geographical Dictionary	111
Pack's Chart of East Kent	56
Polinitz Memoirs	168
Select Lives	580
Shuckford's History	340
State of the Cape	648
Tovey's Hist. of the Jews	ibid
Whiston's Josephus	400

LAW, TRIALS, and TRADE.

C ASES in K. William's Reiga	648
— Charters of Bristol	340
City Liberties	648
Clerk's Associate	708
Coke on Littleton	648
Compleat Attorney	111

INDEX to the BOOKS.

<i>D'Anvers Abridgment</i>	340	<i>Oxford Methodists</i>	708
<i>Demat's Civil Law</i>	648	<i>Persecution of the Quakers</i>	111
<i>Every Man his own Lawyer</i>	224	<i>Pope's Letters</i>	279 and 340
<i>Fortescue de Laudibus</i>	111	<i>Proceedings of human Understanding</i>	168
<i>Gentleman's Law</i>	340	<i>Proposals for Badges</i>	279
<i>Golden Fleece</i>	111	<i>Puffendorf de Officio</i>	400
<i>History of Common Pleas</i>	ibid	<i>Queen's Funeral Ceremony</i>	708
<i>Law laid open</i>	ibid	<i>Rawson's Case</i>	279
— of Inheritance	708	<i>Ditto by Slops</i>	400
— abridg'd	224	<i>Rebellions in Constantinople</i>	279
<i>Manby of Fines</i>	648	<i>Reflections on Polygamy</i>	224
<i>Memorials of Trade</i>	56	— Military, &c.	400
<i>Method of Fines</i>	111	<i>Reliquiæ Juveniles</i>	320
<i>Observations on Commerce</i>	ibid	<i>Rise of the Papal Power</i>	56
<i>Practising Attorney</i>	340	<i>Sacred Classics</i>	224
<i>Report of the Committee</i>	ibid	<i>Spinosa's Treatise</i>	400
<i>Reforma Brevium</i>	648	<i>Squire of Supremacy</i>	56
<i>Treatise of Equity</i>	111	<i>Strength of human Understanding</i>	ibid
<i>Trial of Zenger</i>	708	<i>Treatise of Dignities</i>	400
<i>View of Ecclesiastical Jurisdiction</i>	112	<i>Twells's Answer</i>	279
— Exchequer	648	<i>Value of Leases</i>	ibid
MISCELLANEOUS:		<i>Vindication of the Quakers</i>	520
A DDISON's Maxims	580	— Ubiquarians	56
Address to Bachelors	279	<i>Whiston's Demoniacs</i>	520
Advice to Servants	580	<i>Year of Wonders</i>	168
<i>Army's Regulator</i>	648	<i>Youths Introduction</i>	460
<i>Burning of London</i>	460	PHILOSOPHY and PHYSICK.	
<i>Chubb's Divine Conduct</i>	279	A NATOMY epitomiz'd	340
<i>Church of England's Complaints</i>	168	<i>Anstruc on the Venereal Disease</i>	168
— turn'd Dissenter	580	<i>Arbutnot of Aliments</i>	112
<i>Complete Family Piece</i>	168	<i>Armstrong's Venereal Disease</i>	ibid
— Tradesman	508	<i>Astronomical Year</i>	224
<i>Conscientious Non-Conformist</i>	580	<i>Bayne on the Nerves</i>	580
<i>Consequences of Luxury</i>	168	<i>Bracken's Farriery</i>	400
<i>Conversions in New-England</i>	580	— Pocket Farrier	ibid
<i>Defence of the Moral Philosopher</i>	400	<i>Chapman against Douglass</i>	112
<i>Dissertation on High-Roads</i>	340	<i>Cowper's Anatomy</i>	224
<i>England's Black-Tribunal</i>	460	<i>Dales's Pharmacologia</i>	460
<i>Examination of the Quakers</i>	279	<i>Douglass Venereal Disease</i>	224
<i>Farther Inquiry</i>	340	<i>Ditto — Part 2.</i>	708
<i>Grewes's Works</i>	279	<i>Farrier's Assistant</i>	112
<i>Heads of great Men</i>	111	<i>Gordon on Mummies</i>	224
<i>Henley's Select Orations</i>	400	<i>Hamilton on Fevers</i>	112
<i>High flown Episcopacy</i>	580	<i>Hull's Machine</i>	224
<i>History of Priesthood</i>	168	<i>King of Bathing</i>	460
<i>Howel's Letters</i>	648	<i>Medical Essays</i>	340
<i>Inquiry into Demoniacs</i>	56	<i>Midwife's Companion</i>	112
— Debate	111	<i>Monro's Oratio</i>	708
<i>Immorality of the Moral Philosopher</i>	340	<i>Natural History of Song Birds</i>	340
<i>Letter to Mr. Gill</i>	56	<i>Newcastle's Horsemanship</i>	279
— from Mrs. Jones	ibid	<i>Quincy's Sanctorius</i>	400
— about Subscriptions	168	<i>Rowning's Natural Philosophy</i>	168
— Bishop of London	ibid	<i>Smith of Fluxions</i>	340
— to the Moral Philosopher	460	<i>Stone's Midwifry</i>	168
— — Ministers of Scotland	ibid	<i>Sydenham's Method</i>	400
<i>Logan's Charge</i>	279	<i>Taverner's Witbam Spaw</i>	460
<i>Man of Manners</i>	224	<i>Treatise of Hearing</i>	400
<i>Mayne's Rational Notions</i>	580	<i>Turner's Syphilis</i>	ibid
<i>Memoirs of the Times</i>	56	<i>Walnewright on Non Nat.</i>	340
<i>Miscellanea vere utilia</i>	580	PLAYS, POETRY and ENTERTAIN-	
<i>Montagne's Essays</i>	340	MENT.	
<i>Moral Philosopher</i>	111	A DVENTURES of 300 Years	111
<i>Morals of the Antients</i>	56	<i>Albania</i>	168
<i>Moscowian Letters</i>	648	<i>Amitas</i>	ibid

INDEX to the BOOKS.

Art of Life	340	Parnell's Poems	460
Artists Muse	279	Patriotick Love	50
Bacchus and Venus	56	Philosophy of Love	648
Bachelor of Salamanca	ibid	Poem on Lord Talbot	111
Beauties of the English Stage	111	—— D. of Buckingham	168
Bridges of Providence	224	—— Queen Ann	340
Buchanani Psalmi	648	—— Q. Caroline	708
City Farce	ibid	Poet and the Muse	340
Collection of Novels	224	Pope's Horace	279
Contrast Man of Honour	279	Projectors	340
Cür and Lap-Dog	ibid	Prophetick Physician	224
Daniel's Psalms	224	Publick Spirit	340
Diseases of the Bath	111	Rape of Helen	279
Distrest Fair	460	Rawster's Miscellanies	320
Donna Clara	111	Rival Milliners	111
Dragon of Wantley	648	Robinson's Heliod	460
Drayton's Epistles	168	Sessions of the Criticks	168
Duck on the Queen's Death	708	Sighs of Albion	708
English and Scotch Songs	56	Singer's Poems	380
Epigrammata Nova	224	Spleen	111
Epistle to Mr. Pope	340	Syren	320
Essay on Conversation	168	Tales of the Fairies	580
—— Happiness	ibid	Tatlers	460
—— the Times	279	Tears of the Muses	648
—— Pope's Odyssey	460	Test of Love	520
Eugenio	279	Thompson on Talbot	340
Eunuch	400	Thurston's Poems	168
Fatal Curiosity	224	Tutor to the Beaus	ibid
Female Tumbler	520	Verses on the Queen	708
Folly	111	Unequal Match	168
Fra Cipola	ibid	Universal Passion	ibid
French Songs	400	—— Musician	520
Gallantries of the Space	ibid	Use of the Stage	340
Gay's Poems	ibid	Welch Travels	580
Greek and Latin Measures	648	Welfed on the Princess	460
Happiness	168	Young's Love of Fame	ibid
Health	56	POLITICAL.	
Historical Register	279	CLERGY's Plea	340
History of Clorana	ibid	Codex no Christian	ibid
Horace to Augustus	460	Collection of Protests	520
—— Venus	168	Conduct of the Clergy	111
Jealousy no Safe-guard	111	Considerations on Pluralities	ibid
Impertinent	279	—— 3 per Cent.	224
Independent Patriot	224	Craftsman	340
Innocence distrest	340	Defence of M. Chaucelin	180
Intriguing Milliners	708	Domestick Divisions	580
King Charles I.	168	Englishman	111
King and the Miller	111	Essay on Parties	56
Ladies Miscellany	460	—— Simony	111
Legacy Hunting	340	False Patriots	224
Leonidas	224	Harrington's Works	180
Mad House	279	Jesuit unmask'd	111
Medulla Poetarum	460	Lessening National Debt	180
Merry Songster	224	Letter to Cardinal Coscia	111
Miscellany Poems	460	—— Common Sense	224
Misers Feast	648	—— a Livery Man	280
Mother Gin	279	—— the Bishop of London	111
Mother Goose	400	—— about the Prince of Wales	340
Muses Library	279	Plea for the Quakers	224
Nuptial Dialogues	520	Proceedings Schism Bill	168
Ode to Chesterfield	56	Pseudo-Patriots	340
OEconomy of Love	460	Q. Elizabeth's Speech	520
Olive	168	Repealing Pot-Act	56
Order	279	Review of the Test	111

INDEX to the Books.

<i>Scott's Prophecy</i>	208
<i>Second Political Dial.</i>	ibid
<i>Speech without Doors</i>	224
<i>Works of Tacitus</i>	280
<i>Worth of Liberty</i>	112

SERMONS.

A <i>NDERSON in the Old-Bailey</i>	460
<i>Arnold at a Visitation</i>	340
<i>Arnoldsmith on Jan 31</i>	168
<i>Atkinson's 4 Discourses</i>	460
<i>Asaph (Bishop of) at Boro</i>	112
<i>Berryman, Clergy's Sons</i>	280
<i>Boston of Afflictions</i>	580
<i>Brome at Norwich Affizes</i>	520
<i>Burroughs on New Year's Day</i>	112
<i>Carleton's Sermons</i>	56
<i>Denne on June 11</i>	340
<i>Dodderidge at Northampton</i>	280
— at an Ordination	648
<i>Earle at Salters' Hall</i>	112
<i>Fenwicke at Hallaton</i>	56
<i>Foster's Sermons, Vol. II</i>	400
<i>Fothergill on Jan. 31</i>	168
<i>Goodwin on Bruce's Death</i>	708
<i>Green at Chelmsford</i>	580
<i>Grove of Examples</i>	280
<i>Hadfield at an Ordination</i>	648
<i>Harris on the Lord's Supper</i>	112
— on August 1	460
<i>Harte at Oxon</i>	648
<i>Hartley on Prayer</i>	280
<i>Jennings at Salters-Hall</i>	400
<i>Langford on Mrs. Wood's Death</i>	648
<i>Moffe's Sermons</i>	168
<i>Muscatt's Visitation Sermon</i>	348
<i>Norwich (Bp. of) on June 11</i>	ibid
<i>Paterfon in the Fleet</i>	460
<i>Peers on Publick Worship</i>	520
<i>Peliere of Grace</i>	112
<i>Pierce's Sermons</i>	400
<i>Read on Adams's Death</i>	520
<i>Richardson on Platt's Death</i>	460
<i>Roper Conscio ad Clerum</i>	340
<i>Rudd in Snow's Fields</i>	520
<i>Say on New-Year's Day</i>	112
<i>Seagrave's Sermons</i>	280
<i>St. John's Sermons</i>	168
<i>Shuckford at a Consecration</i>	340
<i>South's Sermons</i>	400
<i>Sprint at a Wedding</i>	460
<i>Stephens's Sermons</i>	400
<i>Tew at Durham</i>	648
<i>Thomas at St. Sepulchre's</i>	340
<i>Towgood at an Ordination</i>	520
<i>Underbill at Lady Moyer's Lecture</i>	580
<i>Wake's Sermons</i>	224
<i>Warren of Industry</i>	280
<i>Webster at Kingston</i>	400
<i>Wheatley on Sept. 29</i>	580
<i>Whitfield of Society</i>	708
— of Self-Denial	ibid

<i>Wilkinson at the Charter-house</i>	56
<i>Wright in the Old-Jewry</i>	648

THEOLOGICAL.

A <i>BRIDGMONT of Boyle's Lectures</i>	224
<i>Angelical Worlds</i>	580
<i>Answer to the Birmingham Dialogue</i>	708
— to the Excuses	ibid
<i>Baptême Retabli</i>	400
<i>Bunyan's Works, Vol. II.</i>	520
<i>Burnet of Redemption</i>	ibid
<i>Christ's Fear of Death</i>	280
<i>Christian School-Master</i>	168
— Magazine	708
<i>Colliber's known God</i>	112
<i>Country Parson's Advice</i>	460
<i>Cruden's Concordance</i>	648
<i>Cure of Deism</i>	400
<i>Death of the Righteous</i>	280
<i>Dialogue at Birmingham</i>	580
<i>Dubois of Spiritual Communion</i>	224
<i>Dudgeon's Letters</i>	168
<i>Essay on Religion</i>	56
<i>Family Prayer-Book</i>	280
<i>Five Letters</i>	224
<i>Fleetwood's Works</i>	112
<i>Foster against Stebbing</i>	112
<i>Help for the Sincere</i>	708
<i>Infants Church-Membership</i>	580
<i>Kenn's Retir'd Christian</i>	708
<i>Lardner's Gospel History</i>	520
<i>Law against the Plain Account</i>	224
— of Christian Perfection	400
<i>Law of Nature</i>	280
<i>Laws of the Gospel</i>	112
<i>Litebfield (Bp. of) Charges</i>	168
<i>Lowman on the Revelations</i>	112
<i>Maurice's Theological Quest.</i>	400
<i>Moore's Natural Religion</i>	112
<i>Morality of Religion</i>	580
<i>New Week's Preparation</i>	520
<i>Ordination of Ministers</i>	280
<i>Persuasive to Union</i>	400
<i>Paraphrase on Christ's Sermon</i>	580
<i>Philemon to Hydaspes</i>	280
<i>Plain Account vindicated</i>	ibid
— not Scriptural	460
<i>Platt's Rational Account</i>	ibid
<i>Papery confuted</i>	580
<i>Pyle on the New Testament</i>	ibid
<i>Rees of Psalm-singing</i>	280
<i>Remarks on Slops</i>	400
<i>Smithies of early Piety</i>	580
<i>Social Religion</i>	56
<i>Stebbing against Foster</i>	168
<i>Supplement to Salters-Hall Sermons</i>	580
<i>Thoughts on Divine Mercy</i>	400
<i>Truth ascertain'd</i>	56
<i>Wake's Epistles</i>	400
<i>Warren's Appendix</i>	112
<i>Waterland's Review</i>	460
<i>Wingfield's Plain Account</i>	168

